MORE THAN JUST A MONTH

Reviving—and making—Black history in Washington and beyond: an interview with blackpast.org creators
Dr. Quintard Taylor and State Representative Jamila Taylor / p. 30
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In this issue of Bar News, we interviewed retired University of Washington history professor Dr. Quintard Taylor and his daughter, WSBA member and State Rep. Jamila Taylor. Something Rep. Taylor said during that interview has stuck with me since I heard it: “[W]e’re not looking to go to a new normal after the pandemic is over. We’re looking to go to a new possibility and that requires us to also look at the past.”

February is Black History Month. While we acknowledge that awareness and appreciation of Black history should not be confined to a single month—in the words of Dr. Taylor, “African American history is a fundamental part of American history”—we still wanted to use this month’s issue of Bar News as an opportunity to look at the past. This is especially important for those involved in the legal community, as Black people continue to be overrepresented in the criminal justice system and underrepresented in the legal profession.

Find the full interview with the Taylors on page 30. They are two brilliant people, and they had a lot to share about Black history, the legal profession, and the website they started called blackpast.org.

Also in this issue: a perspectives piece by WSBA member Gus Lindsey on what it’s like to be a Black attorney raised in the South and now living and working in Washington (page 38), an overview of the history of voter suppression in the U.S. (page 40), a look at the history of the Indian Child Welfare Act and the recent landmark Washington Supreme Court decision interpreting it written by Justice Raquel Montoya-Lewis for a unanimous court (page 26), the rundown on a recently enacted, powerful rescue tool for struggling small businesses and individuals seeking to restructure debt, Subchapter V to Chapter 11 of the Bankruptcy Code (page 44), and more.
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Stop the Fees

I believe it is financially unjustified to charge WSBA members $12 to renew their membership by credit card. If it costs the WSBA that much, then some organizational/process changes are needed at the WSBA. Paying for membership, regardless of the manner of payment, should not cost members anything. That should be the basic benefit of membership, if nothing else.

The renewal process needs to tell users of this charge BEFORE they approve the transaction so they can stop and pay by check if that is their choice. And I would pay by check on principle just because the WSBA is fleecing members for paying by credit card.

I also do not appreciate the WSBA opting me in as the default for the two extra “donations” the WSBA wants to extract from members. Same for the Keller Deduction, which is far too low for the political direction the WSBA has taken over the [past] several years.

I get nothing useful out of my membership. NOTHING! My wish for 2021 would be for the WSBA to become voluntary, which is probably as likely as snowballs melting in hell.

Inez Petersen
Enumclaw

WSBA RESPONDS: The service provider does charge a 2.5 percent transaction fee on all card transactions; the WSBA does not charge members an added fee for bank card payments.

LET US HEAR FROM YOU!

We welcome letters to the editor on issues presented in the magazine. The full letters to the editor policy is available at www.wsba.org/news-events/Bar-News. Email letters to wabarnews@wsba.org.

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Expressing Different Views

I have read [Executive Director Terra Nevitt’s November 2020 Bar in Brief column, “Racism and Divisions in the Legal Community: Listening Harder”] about race issues and divisions in the legal community. The note wrongfully suggests that “anti-oppression training” and the like are the way to listen harder and make us more “normalized.” For all the world, this sounds to me like saying that the beatings will not cease until morale improves. In order to have dialogue and peace among people who disagree, we must have calm discussion, not ramrodding, and people with wildly different views ought to be able to express them. This would mean left people, right people, people of color, the whole shebang. Now that is difficult because most people are afraid to talk with people of color or minorities and for all I know (being white) most people of color are afraid to talk frankly about race with the white world. …

We can all start by making an effort to talk on the grassroots level, I mean on the courthouse coffee shop level, with people who are different. Those who [disagree with] Terra Nevitt should tell her if they think her ideas are not so good. And vice versa. I make an effort to talk to people of color or as a start to “make it better.” But I am thinking also of encouraging … friendly talk with people who disagree totally. Trumpistas and Sandernistas (just looking for symmetry) talking and exchanging views.

Of course croquet is a good start but [it’s] not the right season.

To close with my commercial: In my opinion, the constitutional duty of our courts and any court is to remain neutral to all parties. To follow the law and not how they think things should be. This means that it is improper and unconstitutional for the supreme court to take official stances such as “promoting diversity and inclusion among legal service providers” GR12.1(j) or providing sua sponte and ex jure (outside of court) their official or semi-official views on the demonstrations and events of this past summer. Of course, everyone is free to totally disagree.

Roger B. Ley
Portland

Unethical Fees?

RPC amendments have been proposed to make permissible what some RPCs currently prohibit, if done under the auspices of a local bar association or nonprofit referral service.¹

A survey of the four largest county bar associations reveals the King County and Tacoma-Pierce County Bar Associations charge a contingency fee to refer cases. KCBA’s is 20 percent of the attorney’s fee; TPCBA’s is slightly less. Both also charge the client a flat fee for the work of the referral. Yet, both Spokane and Clark County Bar Associations provide the exact same service and charge no contingency fee; they charge only the flat fee for the work done.

As I interpret the rules, such contingent referral fees require attorneys to violate too many RPCs to identify here including (1) RPC 5.4 (sharing a fee with a non-lawyer), (2) RPC 1.5(a) (having a fee not related to the work to earn it), and (3) the anti-barratry statute (RCW 9.12.010) as the bars make recommendations of a specific attorney to the client in exchange for being paid by the lawyer to do so. Danzig v.

¹ TPCBA’s is slightly less than for the same service (just looking for symmetry)
However, the real point is although county bar association efforts at pro bono are laudable, even if all the fees were used for it we have long acknowledged as a nation of laws that “lawful ends do not justify unlawful means.” All the arguments in support of the amendments are only that. The nature and harm of the conduct does not change based on who is engaging in it.

There is too much to unpack to do so here; our website has an analysis for reference. While the practice has been tolerated, a cursory examination reveals it is, in my opinion, unethical and improvident. The court’s comment period is open until April 30. What say you?

Dan Bridges
Past WSBA Treasurer and Governor

EDITOR’S NOTE: Comments on proposed rules of court can be submitted to the clerk of the Washington Supreme Court by either U.S. mail (P.O. Box 40929, Olympia, WA 98504-0929), or email (supreme@courts.wa.gov).

NOTES
1. “Proposed amendments are to RPC 7.2(b)(2). Comment 6; RPC 7.2, Comment 5; and RPC 1.5(e)(2). See www.courts.wa.gov/court_rules/?fa=court_rules_proposedRuleDisplay&ruleId=5791.
There’s More on the Blog

ABA Issues New Ethics Opinion on Remote Working

The pandemic has forced many lawyers to work remotely. In some instances, that simply means working out of a home office in the same city that the lawyer’s firm is based. In others, however, lawyers have been working from second homes in states in which they are not licensed to practice law. The American Bar Association (ABA) recently addressed [...] nwsidebar.wsba.org

Washington Supreme Court Approves Major Changes to Lawyer Marketing Rules

On Jan. 8, the Washington Supreme Court approved significant amendments to the RPCs governing both lawyer advertising and in-person solicitation. The Supreme Court’s action culminates a lengthy review of the lawyer marketing rules by both [...] nwsidebar.wsba.org

State Supreme Court Case Could Determine Fate of King County’s Inquest Process

King County is one of the only jurisdictions in the country that requires an inquest every time a police officer kills a community member. But will these inquests continue to be largely pro forma processes that almost always appear [...] nwsidebar.wsba.org

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President’s Corner

All the Bar News That’s Fit to Print

For years, I’ve heard members say, half jokingly, that when they receive their copy of the magazine in the mail, they immediately flip to the disciplinary and regulatory notices and read little else. I am sure there were times in the past when I did the same thing, given the press of work and the balance of family and community obligations. But if you are one of those people who only reads the disciplinary notices, you’re missing out! We are fortunate to have incredible writers among our members who contribute their talent to presenting fascinating topics for us to devour. Indeed, Bar News has become an award-winning magazine that our members should be proud to support.

And this particular issue is no different. I hope you will enjoy the articles contained in this issue.

Leslie Brown writes about the Washington Supreme Court’s decision in In re Dependency of Z.J.G. and M.E.J.G., 196 Wn.2d 152 (2020)—a decision that reinforces the important role Native families and Indigenous tribes play in child-custody proceedings involving Native children. Justice Raquel Montoya-Lewis’s decision for a unanimous court has been described as a watershed case that will have a lasting impact on the application of federal and state legislation designed to prevent removal of Native children from their homes and communities without considering the rights of the parents, the welfare of the children, and the interests of the Native tribes.

Also included in this issue is a thought-provoking article from G. (Gus) Lindsey III who shares his perspective as a Black, Southern-raised attorney practicing in Washington. His call for us to “challenge our own preconceived perceptions and beliefs on race” is poignant and direct.

Kyle Sciuchetti
WSBA President

Sciuchetti is a partner of Miller Nash Graham & Dunn LLP, where he serves as outside counsel for businesses. He can be reached at kyle.s@board.wsba.org.

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PAULA LITTLEWOOD | 1965 – 2020

A Leader, a Visionary, and Our Friend

BY FORMER WASHINGTON SUPREME COURT CHIEF JUSTICES
MARY FAIRHURST (RET.), BARBARA MADSEN, AND DEBRA STEPHENS
Paula had a long and distinguished legal career in Washington. She earned her juris doctorate with honors in 1997 from the University of Washington (UW) School of Law and a Master of Arts in international studies (Chinese) the same year. Paula worked at the UW Law School as assistant dean for administration and public relations from 1998 to 2002. After a year in Colorado, Paula returned to Seattle and worked as deputy executive director of the WSBA beginning in 2003; she became executive director and served with distinction from 2007 until early 2019.

Paula was a highly respected leader, beloved by her staff, her peers, and throughout the legal profession—locally, nationally, and internationally. She had a personal, collaborative management approach, and she mentored and respected those with whom she worked. Always a strategic thinker, Paula looked forward. She had a vision of what the WSBA could be and encouraged staff and volunteers to think “big” to make the legal profession in our state the best it could be. During her tenure at the WSBA, many innovative programs were implemented, and Washington became a recognized leader nationwide in pioneering new programs and improving access to justice. Paula was passionate about and worked tirelessly to further the mission of the WSBA, including, most critically, increased access to quality legal representation for all people.

Paula was asked to serve on many national and international boards, including the American Bar Association’s (ABA) Commission on the Future of Legal Services. She also co-chaired the ABA’s Regulatory Opportunities subcommittee and was a member of the ABA’s Task Force on the Future of Education, as well as the Institute for the Advancement of the American Legal System Board of Advisors.

Paula brought her vision and energy to the development and adoption of the Limited License Legal Technician (LLLT) initiative, a first-in-the-nation program focused on expanding access to legal help, initially in the area of family law. From inception, the idea was controversial, but through her collaborative work with members of the Bar and the broader community, Paula helped launch and continually refine a regulatory framework for limited license professionals to help people who might otherwise go unrepresented solve their legal problems. The LLLT program was authorized in 2012 and soon became a model for initiatives in other states. Many—including Arizona, California, New Mexico, and Utah—are now launching similar limited license initiatives at the same time the Washington Supreme Court has decided to sunset the LLLT program in our state. The vision of the program remains, however, as does the growing need to find alternatives for people to get quality legal assistance and low-cost limited representation.

In this vein, Paula was working hard on regulatory reform before she passed. She knew that the rules regulating our profession can produce racial inequity and deny equal opportunity to access the law. In January, the Supreme Court took a step forward in embracing one of the reforms on Paula’s agenda, approving significant amendments to the RPCs (Title 7) governing information about legal services.

We cannot close our comments about Paula without reflecting on what a warm and loving person she was. She was always first to reach out with a note or call to say thank you or give encouragement. And she was never afraid to join in a bit of frivolity—some will remember her (darn good) tap-dancing at the Access to Justice Conference! Paula was not only wonderful to work with, but she was also wonderful to know, and her strength of spirit and compassion for others have made us all better.

Paula had a stellar legal career. She made a difference every day in very many ways, and the legal profession will feel the loss of the great things she was yet to accomplish. But what we, her friends and colleagues, will miss most about Paula are her generous spirit, her easy laugh, and her presence in our lives.
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Reexamining Investments and Reforecasting the WSBA Budget

Happy 2021—a new year with fresh possibilities. For me, the end of 2020 for so many reasons could not come fast enough. On a personal note, this holiday season has really emphasized the importance of health, family, and community—in particular, living each day with gratitude and not taking these immense gifts for granted. My wish for you is an abundance of all three as we continue to navigate through a changing world and, most importantly, that you are staying safe from the ongoing COVID-19 pandemic.

As for the Washington State Bar Association, we are planning for a financially sound year as well. The ongoing intent of this column is to provide maximum transparency and communication about the financial matters of the WSBA, and I’d like to provide information about two initiatives underway to keep our Association in good financial stead: An evaluation of our current investment portfolio and a midyear budget reforecast.

Before diving in, some good news: Certified public accounting firm Clark Nuber has issued an unmodified “clean” audit opinion for the WSBA’s 2020 fiscal year. This marks multiple consecutive years of unqualified reports, which should give members a high degree of confidence in the Bar’s financial integrity. An unmodified/unqualified opinion means there were no adjustments made, no material weaknesses found, and no management-letter issued. The data the WSBA reports on its financial statements is true and accurate. Congratulations to the Bar’s financial team and to the Budget and Audit Committee for their diligence and professionalism!

INVESTMENT STRATEGY

I have requested a full evaluation of our investment policy in light of current economic challenges that have lowered interest rates. While the WSBA’s investments are currently yielding at market rates, we are looking for low-risk investments that will provide even better returns. What does that mean in terms of actual numbers? With an investment portfolio of about $2.24 million—the majority of which is invested in bonds—the WSBA averaged a 2.04 percent rate of return last year, compared with a 3.99 percent average annualized rate of return since 2018.

In November, a subcommittee of the Budget and Audit Committee consisting of Governors Bryn Peterson, Peter “P.J.” Grabicki, WSBA CFO Jorge Perez, and I met with experts from Merrill Lynch and Morgan Stanley to better understand market conditions, and we are continuing to work with them to look for potential opportunities to tweak our investment policy and portfolio to reap larger returns. I do not foresee any dramatic shifts, however, because the WSBA will always operate conservatively in the investment world. Our policy instructs us to preserve principal. We invest in things like bonds and CDs, which are guaranteed to protect the initial investment. The Budget and Audit Committee will continue to examine options moving forward for the WSBA, so stay tuned for future treasurer’s reports for updates on the process.

REFORECAST

We have begun our budget reforecast, which is the process of comparing, midway through the fiscal year, actual revenues and expenses against our initial budget assumptions. We implemented the budget-reforecast process last year, and we will continue to use it annually to ensure that we course-correct as necessary through the fiscal year to come out in the end with right-sized balances and reserves. The reforecast process is designed to maximize efficiencies and to ensure that we are providing the Board of Governors, staff, and the membership with the most accurate, up-to-date financial information.

COVID-19 continues to cause economic unknowns. Anticipating this uncertainty, we developed the Fiscal Year 2021 Budget (the fiscal year runs October through September) with some leeway and safeguards, such as forecasting less CLE revenue than in past years as we continue to develop more free programming to help members navigate the pandemic in the months ahead. Throughout the first quarter of the fiscal year, our actual revenues and expenditures have been fairly close to our assumptions. However, licensing season is the most critical component of our overall forecast, and we will have those actual revenue numbers after the Feb. 1 licensing deadline. Our goal for the reforecast is to present the adjusted midyear budget to the entire Board of Governors at the March meeting.

As always, it is an honor to serve as treasurer. I take seriously my responsibility to serve our organization well and to keep you informed. Do not hesitate to reach out to me if you have questions or feedback.
A Useful Tool: Lateral Hire Screening

BY MARK J. FUCILE

The lawyer who hired me when I entered private practice had joined the firm as an associate out of law school and eventually retired from that same firm over 30 years later. Although there are still a few lawyers with that career path, it is becoming increasingly rare. Most lawyers today will change positions several times over their careers—often moving from firm to firm in private practice.

Washington RPC 1.10(e) facilitates lateral movement in private practice through screening to address otherwise disqualifying conflicts. It allows lawyers to further their careers by moving to new firms and benefits the firms they join with their additional talent. At the same time, it protects clients by ensuring that the lawyers moving laterally do not share information about their former clients with their new firms. In short, screening is a key practice management tool for law firms.

When a lawyer leaves an “old” firm to join a “new” firm and does not bring clients along, the clients for whom the lawyer worked or otherwise acquired confidential information at the “old” firm become the lawyer’s “former clients” under the former-client conflict rule, RPC 1.9. Because RPC 1.10(a) generally imputes the conflicts of one lawyer in a firm to the lawyer’s entire firm, a new-hire’s former client conflicts will be imputed to the “new” firm. Although in many circumstances this will not create problems for the “new” firm because the “new” firm is not handling matters adverse to the new-hire’s former clients, it poses a potentially disqualifying conflict if the “new” firm is working on the other side of an ongoing matter. In that scenario, the new-hire’s former-client conflict would be imputed to the “new” firm unless the conflict is waived by the former client or the new hire is screened under RPC 1.10(e). Because waivers can often be difficult to obtain in the middle of heated litigation or a difficult transaction, screening—which can be implemented by the “new” firm unilaterally—is usually a more practical solution. If a new hire is effectively screened from the matter involved, then the new hire’s former-client conflict will not be imputed to the “new” firm as a whole.

In this column, we’ll look at two principal aspects of screening under RPC 1.10(e). First, we’ll discuss the critical importance of running conflict checks as a part of the hiring process. Second, we’ll survey the
Failure to screen—or to screen effectively—can have a significant impact on the ‘new’ firm.

“mechanics” of screening.

Before we do, however, three preliminary comments are in order.

First, failure to screen—or to screen effectively—when necessary can have a significant impact on the “new” firm. In addition to any disciplinary ramifications for the individual lawyers involved, conflicts in the lateral movement setting are most often resolved through the court-imposed remedy of disqualification of the “new” firm from the case concerned.4 Disqualification, in turn, can have further consequences—usually none of them good—for the firm’s relationship with the client that just lost its chosen counsel, on which it may have spent substantial fees, through a disqualification that was of the firm’s own making.

Second, although we’ll focus on lateral movement by lawyers, Washington’s rule also encompasses screening of non-lawyers such as paralegals through Comment 11 to RPC 1.10. This comment recognizes both that lawyers have a duty to supervise non-lawyers under RPC 5.3 and that non-lawyers are often privy to the same kind of confidential information that screening is designed to protect.5

Third, in theory nothing prohibits screening when a group of lawyers joins a firm—such as when a small firm merges into a larger firm—and that group of lawyers does not bring the clients with them that might otherwise create conflicts.6 The practical utility of screening in the merger context, however, is often limited because the economic driver for most mergers is the expectation that the firm being acquired will bring its clients to the merged firm.

CONFLICT CHECKS
Regardless of the position being filled, running a conflict check on a potential lateral hire before an offer is extended, or making the offer conditional on conflicts being resolved, is prudent for two primary reasons.

First, there may be situations in which a conflict is a “show stopper” because the matter creating the conflict is extremely sensitive and screening may not be a foolproof remedy. For example, the lawyer on the other side of a bitterly fought, high-dollar divorce case may not be a good candidate for screening if the firm interested in hiring the lawyer is a small firm with an open office plan where there is no practical way to implement effective screening.

In that instance, a more prudent approach may be to defer discussions until the divorce case is resolved.7

Second, if there are conflicts and screening is a viable remedy, knowing about them in advance will allow for screening to be implemented before or at the time the lawyer involved arrives for work at the “new” firm. Delaying a screen can put the hiring firm at risk of being on the receiving end of a disqualification motion by an aggressive opponent. In Daines v. Alcatel, S.A., 194 F.R.D. 678 (E.D. Wash. 2000), for example, the plaintiff challenged a screen implemented less than 24 hours after a paralegal who had worked for the plaintiff’s law firm on the matter involved went to work for the defendant’s law firm. The paralegal brought her conflict questionnaire with her when reporting for her first day of work. The hiring firm ran the conflict check the following day and promptly instituted a screen. Although the court ultimately denied the plaintiff’s disqualification motion, the court’s ruling came only after extensive discovery—including a number of depositions—over what the paralegal had done at the defendant’s law firm during the brief period before the screen was in place.

RPC 1.6(b)(7) generally permits a prospective new-hire to share the names and at least general information about matters the lawyer has handled at an “old” firm so that the “new” firm can run a conflict check. Comment 13 to RPC 1.6 discusses the scope of the information involved: “Any such dis-
MECHANICS

RPC 1.10A(k) defines screening broadly as “the isolation of a lawyer ... from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer ... is obligated to protect[.]” If a screen is necessary, there are three central components.

First, under RPC 1.10(c)(1), the lawyer being screened must not participate in the matter involved at the “new” firm. The rationale underlying screening is that the new hire with the conflict must maintain the former client’s confidential information while not being involved in any respect in the matter otherwise triggering the conflict at the “new” firm. RPC 1.10(e) emphasizes this by permitting the lateral hire to execute an affidavit to this effect. Other measures—such as restricting the lawyer’s access to the file involved—may also be appropriate to assist the hiring firm in demonstrating that the lawyer will not participate in the matter involved.9 RPC 1.10(e) also requires that lawyers and staff at the “new” firm who are working on the matter involved be informed of the screen. As a practical matter, a firm-wide (or at least office-wide) email is the easiest way to both provide and document this notice.

Second, under RPC 1.10(c)(2), the former client must be given notice of the screen. The notice must include a copy of the screened lawyer’s affidavit and must describe the screening procedures used. If requested by the former client, the notice (in the form of an affidavit) “shall be updated periodically to show actual compliance with the screening procedures.” RPC 1.10(e) allows either the “new” firm or the former client to seek judicial review or supervision of the screen. If the “old” firm still represents the former client, Comment 12 to RPC 1.10 allows the notice to be served on the “old” firm and with a request “in writing that the former law firm provide a copy of the affidavit to the former client.” Otherwise, the notice must be served directly on the former client. Comment 12 to RPC 1.10 notes that direct service does not violate the “no contact” rule because it falls within the “authorized by law” exception of RPC 4.2.

Third, RPC 1.10(e)(1) requires that the screened lawyer be “apportioned no part of the fee” from the matter involved. WSBA Advisory Opinion 190 (rev. 2009) counsels that with a firm’s equity holder, the apportionment applies to the net profits (i.e., less direct expenses and overhead) rather than the total fees from the matter concerned. With a non-equity holder, Advisory Opinion 190 concludes that the apportionment only applies to any bonus or distribution linked specifically to the matter involved.10

NOTES

1. Washington RPC 1.10(e) is substantially similar to ABA Model Rule 1.10(a)(2) but traveled a circuitous route to that similarity. Neither the ABA Model Rules nor the Washington RPCs as originally adopted in the 1980s contained a screening mechanism for lawyers moving from firm to firm in private practice. See ABA, A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982-2013 249-56 (2013) (ABA Legislative History); Robert H. Aronson, “An Overview of the Law of Professional Responsibility: The Rules of Professional Conduct Annotated and Analyzed,” 61 Wash. L. Rev. 823, 852 (1986). In 1993, Washington adopted screening in this context through an amendment to RPC 1.10. See RPC 1.10, cmt. 9 (discussing history). The ABA amended Model Rule 1.10 in 2009 to include screening. See ABA Legislative History at 268-74. Washington then further amended RPC 1.10 in 2011 to move our rule closer to its ABA Model Rule counterpart. See RPC 1.10, cmt. 9.

2. The waiver by the new hire’s former client would be under RPC 1.9(b). Depending on the circumstances, a corresponding waiver by the current client of the “new” firm might also be necessary under RPC 1.17(a)(2) and 17(b), which address, respectively, conflicts between the interest of the law firm and those of a client and associated waivers.

3. RPCs 1.11 and 1.12 govern, respectively, movement between governmental positions and private practice and movement between judicial (or similar “neutral”) positions and private practice. Both include screening mechanisms for lawyers joining law firms from governmental or judicial positions (including clerkships) that are similar to RPC 1.10. LLT’s RPC 1.10(e) and RPC 1.10(f) address screening LLTs.


8. Although it predates the adoption of ABA Model Rule 16(b)(7) on which Washington RPC 16(b)(7) is based, ABA Formal Opinion 09-455 (2009) includes a useful discussion of the scope of conflict-related information that a prospective new hire is allowed to share with a potential “new” firm. ABA Formal Opinions 99-414 (1999) and 489 (2019) discuss other aspects of lateral movement.


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Strengthen Your Briefs: Argue Rules Before Comparisons

BY BENJAMIN S. HALASZ

When you’re researching an area of law that is fact-intensive—say, one involving a multi-factor test—you’re often looking for the perfect case, one that both presents facts similar to your client’s and that comes out the right way. And it’s very satisfying when you hit the jackpot. You may then be tempted to put that case front and center in your brief, starting your discussion by describing its facts in detail and then pointing out the many ways the case is similar to your client’s.

But while the case might be perfect, if you start your discussion with a case comparison—“arguing by analogy”—you may make your brief harder to follow, and ultimately less persuasive. You should think carefully before abandoning the structure in which you first describe and apply the rules (“arguing by deduction”) and then go on to argue by analogy.

This article discusses the theory supporting the deduction-first, analogy-second structure. While many lawyers naturally gravitate toward that structure in their writing, if you’re clear about the reasons to follow it, you’ll find it easier to be intentional about when to use it and when to discard it.

DEDUCTION VS. ANALOGY
Deductive arguments are different from arguments by analogy. To argue by deduction, an attorney must first establish the rule that governs the court’s decision. For instance, if a plaintiff seeks to prove the tort of defamation against a public figure, the plaintiff must show “actual malice,” which means that “the publisher knew the offensive matter was false or acted in reckless disregard as to the truth or falsity of the matter.”

If my famous client seeks to sue a reporter who published a newspaper article containing falsehoods about her social life, that rule describes what my client must do to prevail on that element. Let’s say the reporter learned the information from an anonymous phone call, and then followed up by checking with a tipsy bartender at one of the supposed host nightclubs. I could see the “reckless disregard as to the truth” rule being met, or not—the rule is sufficiently vague to make it ambiguous.

To argue by analogy, by contrast, I must explain what happened in a prior case and then compare it to my own, focusing on the facts that the rules prioritize. In Eubanks v. North Cascades Broadcasting, the Washington Court of Appeals held that the plaintiff failed to establish “actual malice” where before publishing the information, the defendant broadcaster attempted to resolve...
Inconsistencies, received more information from additional sources, and ultimately made more than a dozen calls to various sources to check the validity of the story. That case differs from my client’s, for while the Eubanks broadcaster made over a dozen phone calls to multiple sources to resolve inconsistencies, in my client’s case, the reporter made only a single phone call to a sole, unreliable source. This argument by analogy compares specific facts; and following the deductive argument, which gave me the applicable rules, it feels helpful and impactful.

WHY DEDUCTION FIRST
To create that impact, in most instances, brief writers should follow that structure and put deduction before analogy. There are at least two reasons for that. First, the deductive argument is an absolute one: it directly addresses the rule that the judge must apply, in this case in a binary fashion—yes or no. The argument by analogy, by contrast, is only relative; and when it comes to picking the “most similar” case and distinguishing dissimilar ones, judges often have many options, weakening the force of any one comparison. Second, deductive rules explain which categories of facts matter, and so form the proper basis for analogies. If I start with the analogy between the facts in my client’s case and the facts in a published decision, my readers will have a harder time following why I’m picking these particular facts.

Think of an out-of-state friend of yours who asks you to pick out some Washington apples for them to try. When I come back with Cosmic Crisps, my most on-point argument is, “I picked these because they are delicious, in terms of both texture and taste. They are crisp and mildly sweet without losing a rich apple flavor.” Texture (crisp) and taste (mildly sweet) are the “rules” that govern the facts that were critical to my decision. If instead I say, “I picked these because they are like Honeycrisps, in that they are both sweet and crispy, and although they are also a little like Red Delicious, they are richer in flavor, and they aren’t very similar to Granny Smiths because they are sweeter and firmer,” my poor apple-ignorant friend, unfamiliar with many apple varieties known to Washingtonians, might still wonder why I chose these. Both types of arguments are important, but only deduction goes directly to the issue to be decided and explains clearly what types of facts matter for that decision.

Putting deduction first is also helpful as a practical matter: if you’re struggling to organize an overabundance of relevant cases or rushing to meet a deadline, it gives you a clear, easily applied default method of organization. To further keep my arguments short and structured, I prefer to follow my deductive rules immediately with my explanation of the facts of prior cases, which serve as examples or illustrations of those rules. After I’ve established those rules and examples, I argue my client’s facts first by deduction and then by analogy. Keeping them together helps reduce the number of times I repeat the key facts of my client’s case.

The problem with disregarding the deduction-to-analogy structure came up recently when I was reading appellate briefs concerning the Federal Tort Claims Act and encountered a defendant’s brief I found difficult to follow. It started with a multi-paragraph description of the facts of a prior case, and then argued by analogy, stressing how similar the case was to the facts in the current one. Only after that similarity was established did it give the rules for what the defendant was actually trying to prove— that the government had discretion to act as it did. The brief next applied the facts to those rules—necessarily repeating facts it had already used for the earlier analogy argument—and then went back into more examples and arguments by analogy, again repeating the facts.

The effect was to leave me confused and distracted. I didn’t understand what I was supposed to glean from the first example, and then I read the same client facts multiple times. The brief would have been clearer if it had simply put the deductive rules first, then given the long, detailed example to illustrate how those rules play out in practice, and then argued its client facts by deduction and analogy, combining arguments when appropriate rather than splitting them up and repeating them in multiple separate paragraphs.

There are times when it’s appropriate to change the deduction-first structure. Switching up the normal order can be an effective way to grab a reader’s attention. But I think it’s important to do so deliberately, to realize what you lose, and to write around those problems so that your brief is still crisp and sweet.

RESPONSE TO A READER
Question Your Grammatical Assumptions!

If you’re dealing with a contract or a statute, you might make some assumptions if you saw this definition structure, involving
At first blush, you might think that to meet the definition of “term,” all three conditions must occur, since they are joined by “and.” That was my take at first. But as a Bar News reader pointed out, if you don’t question your grammatical assumptions, you might misread the contract or statute, for the law will sometimes substitute the disjunctive “or” for a listed “and.”

For instance, in 4518 S. 256th, LLC v. Karen L. Gibbon, P.S., the court interpreted the word “and” to mean the disjunctive “or” in the following contract term: “Lender at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and/or any other remedies permitted by Applicable Law.” The lender didn’t have to “require immediate payment in full” before “invok[ing] the power of sale”; despite the word “and,” the language permitted the lender to choose to do only one.

The Gibbon court cited numerous other cases in which “and” is treated as “or,” including one that features that same three-condition structure as the “term” above. E.g., Bullseye Distributing, LLC v. State Gambling Commission, 127 Wn. App. 231, 238, 110 P.3d 1162 (2005) (statute with language “a gambling device is” followed by four numbered descriptions joined by “and” gave four separate options, not one option with four requirements).

So be careful about vehemently sticking to your grammatical assumptions. Sometimes grammatical open-mindedness can go a long way for clients.
Section Spotlight

Administrative Law Section

BY ROBERT KRABILL

Q. What is the most valuable benefit members get from joining your Section that they can’t get anywhere else?
A. We cater to practitioners in the field of Washington state administrative law, as opposed to federal administrative law. We are the Section that covers litigation and practice under the Administrative Procedure Act, the Public Records Act, and the Open Public Meetings Act. We provide a list serve and a quarterly newsletter to connect our members to news, information, and peers. In our newsletter, our members publish and read case reviews and articles as new significant decisions come out. We provide several low-cost mini-CLEs and, in normal times, full-day CLEs annual at a discount to members, who are also invited to serve as Presenters. We publish the Administrative Law Practice Manual and the Public Records Act Deskbook. We actively collaborate with other Sections to build a stronger Section and a stronger Bar.

Q. What is a recent Section accomplishment or current project that you are excited about?
A. In February, our Section pushed for greater communication and collaboration among section leaders to network and share ideas for making sections better. Section leaders now have a regular monthly meeting.

Q. What opportunities does your Section provide for members who are looking for a mentor or for somebody to mentor?
A. The Administrative Law Section is trying very hard to launch a mentorship program. We were planning to introduce our first pairings of mentors and mentees at the April Public Records Act CLE before it was canceled. We are hoping to have a similar launch event when we can gather publicly again. Administrative law is a wonderful field for a new attorney to enter; it offers litigation experience, a fast pace, and a sense of accomplishment as cases rapidly reach resolution.

Q. What advice do you have for building a successful practice in the area of law related to your Section and how does membership in your Section help do that?
A. We believe a successful practice rests on competence and a healthy referral network. Joining our Section connects you to resources for both.

Q. In addition to membership in your Section, what are the best ways to stay up on the developing law in this practice area?
A. The best way to keep up with developments in state administrative law is to read our newsletter. Recent issues are linked to the Section webpage, www.wsba.org/legal-community/sections/ administrative-law-section. We track legislation that touches on administrative law, and we publish articles on recent developments in case law. For more in-depth treatments, attorneys should seek out our Administrative Law Practice Manual (LexisNexis) and Public Records Act Deskbook (WSBA); they are a must-have resource for practitioners in our field.

LEARN MORE >

The Section membership year is Jan. 1-Dec. 31. For more information and to join the Administrative Law Section, or any other Section, visit https://wsba.org/legal-community/sections/sections.

Robert Krabill is the immediate past chair of the Administrative Law Section. He currently serves as an industrial appeals judge for the Washington Board of Industrial Insurance Appeals (BIIA). At the BIIA and the Office of Administrative Hearings (OAH), he has presided over thousands of administrative hearings in the past 17 years. At OAH, Krabill led its Seattle, Tacoma, Olympia, and Yakima field offices. He has taught and hosted numerous CLEs including Faithless Electors, Reasonable Accommodations, Aggravation of Pre-existing Conditions, Judicial Writing, Novice ALJ Training, and Unemployment Insurance Hearings. Krabill graduated from the Seattle University School of Law summa cum laude in 2001.
FROM THE SPINDLE

Recent significant cases decided by the Washington Supreme Court

BY BRYAN HARNETIAUX

Washington Consumer Protection Act
Private Civil Action Proof Requirements

In Young v. Toyota Motor Sales, U.S.A., __ Wn.2d __ (slip op., #97576-1, decided Sept. 24, 2020), Young brought a private action under the Washington Consumer Protection Act (CPA), Ch. 19.86 RCW, for a deceptive act or practice alleged to have occurred in the course of sale of a motor vehicle. More particularly, Young contended that he was entitled to relief under the CPA because he bought a new pickup truck that Toyota advertised had an outside temperature display on the rearview mirror, when it did not. See id., slip op. at 2-3. Young asserted that because of this affirmative misrepresentation he was induced to buy the pickup. See id. at 11.

To establish liability in a private action under the CPA, a plaintiff must prove “(1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a person’s business or property, and (5) causation.” Id. at 5 (citation omitted). In a bench trial, the superior court concluded Young had failed to prove the first element, an unfair or deceptive act or practice, because he had not shown that Toyota’s false statement about the vehicle had the capacity to deceive a substantial portion of the public. See id. at 4. The court also found Young failed to prove public interest, injury, and causation. Id. The Court of Appeals affirmed, and the Supreme Court granted review. See id. at 4-5.

In affirming the superior court, the Supreme Court rejected Toyota’s argument that in establishing the first element, an “unfair or deceptive act or practice,” the plaintiff must necessarily prove the act or practice was material. See id. at 6-10. However, the court appears to limit this holding to situations, like this one, where there is an alleged “affirmative misrepresentation,” as opposed to when the gravamen of the claim is omissive conduct. See id. at 7-9.

Ultimately, while the court concluded that Toyota’s affirmative misrepresentation in advertising did have the capacity to deceive a substantial portion of the public, see id. at 9, it agreed with the superior court that Young failed to prove the causation element. See id. at 11-13. In so doing, the court reaffirmed existing precedent holding that in establishing causation, proof of reliance by the consumer is not required; instead, a “proximate cause,” “but-for” analysis applies. See id. at 12-13. However, the court found that Young had specifically pleaded reliance on Toyota’s misrepresentation as his causation theory and had failed to prove it. See id. at 13.

Constitutionality of Minimum Wage Act Overtime Pay Exemption for Agricultural Workers

In Martinez-Cuevas, et al. v. DeRuyter Brothers Dairy, Inc., et al., __ Wn.2d __ (slip op., #96267-7, decided Nov. 5, 2020), about 300 dairy workers filed a class action challenging the constitutionality of the overtime pay exemption for agricultural workers in Washington’s Minimum Wage Act, Ch. 49.46 RCW. See RCW 49.46.130(2)(g). The workers’ challenge was based on both the “privileges or immunities” clause and “equal protection” guaranty of the Washington State Constitution, Art. I, §12. See Martinez-Cuevas, slip op. at 2-3. The workers first argued that, by virtue of the statutory exemption, the agricultural industry was granted an unlawful privilege or immunity implicating the fundamental
right of employees to receive workplace health and safety protections under the Washington State Constitution, Art. II, §35. Alternatively, the workers argued that the agricultural exemption was race-based and, under a strict scrutiny analysis, violated the equal protection guaranty of Art. I, §12. See id. at 3.

On cross-motions for summary judgment, the superior court ruled that the workers had a different fundamental right, to work and earn a wage, and granted partial summary judgment to that effect. However, the court did not pass upon the constitutionality of the agricultural exemption under Art. I, §12, instead certifying the summary judgment order for discretionary review, which the Supreme Court granted. See id. at 4.

Supreme Court review resulted in four separate opinions. In a five-justice majority opinion, authored by Justice Barbara Madsen, the court first held that Art. II, §35 conferred a fundamental right to health and safety protection, and that the exemption granted to agricultural employers such as DeRuyter constituted a privilege or immunity. See id. at 11-15. The majority next held that under existing precedent regarding the privileges or immunities clause, the Legislature lacked “reasonable grounds” for granting the exemption to agricultural employers. See id. at 15-19. The agricultural exemption was found to be unconstitutional “as applied to dairy workers.” Id. at 18.

The majority concluded:

The only issue remaining before the trial court here was that of overtime pay. The trial court concluded that RCW 49.46.130(2)(g) granted a privilege or immunity and reserved the other aspects of the workers’ claims for trial. While the trial court did not address the reasonable ground for granting the privilege or immunity, we have addressed it above and conclude that no reasonable ground exists. Therefore, we hold the exemption violates article I, section 12. It appears no further issues remain for the trial court to resolve, and therefore we remand the case to the trial court for entry of summary judgment in favor of Martinez-Cuevas, Aguilar, and their fellow class members. We also award their request for attorney fees.

Id. at 19. The majority opinion declined to resolve the workers’ equal protection claim, and also did not address whether its holding was retroactive or prospective in nature. See id. at 18 n.4.

Then-Justice Steven González (now chief justice) authored a concurring opinion on behalf of three justices, all of whom also signed the majority opinion, urging that under an intermediate scrutiny standard of review the exemption violated the equal protection guaranty of Art. I, §12. See Young, González, J., concurring, slip op. at 1, 3, 9-10. This plurality opinion concludes that the exclusion of farm workers from overtime pay is not supported by any important governmental interest. See id. at 9-10. The plurality agrees with the majority that the retroactivity issue is not properly before the court, but goes on to state that, if it were, the majority’s holding should be retroactive. See id. at 10-11 n.1.

There are two dissents, each comprised of the same four justices. The first, by then-Chief Justice Debra Stephens, concludes that Art. II, §35 does not confer a fundamental right on agricultural workers, but instead permits the exercise of police power by the Legislature in defining what are necessary health and safety protections for workers. Consequently, this dissent concludes that the threshold requirement for invoking a privileges or immunities analysis is lacking. See Young, Stephens, C.J., dissenting, slip op. at 15-19. The dissent further finds that, under a minimum scrutiny (rational basis) analysis, there is also no violation of the Art. I, §12 equal protection guaranty. See id. at 26-38.

The second four-justice dissent, authored by Justice Charles Johnson, finds that the issue of retroactive versus prospective application of the majority holding is properly before the court, and urges that the holding should be prospective only, based upon principles of fairness and equity. See Young, Johnson, J., dissenting, slip op. at 1-3. This dissent concludes that the usual presumption that a court decision applies retroactively is overcome under the particular facts and circumstances of this case. See id.

The plurality opinion concludes that the exclusion of farm workers from overtime pay is not supported by any important governmental interest.

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NOTES
1. In Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc., 162 Wn.2d 59, 82-83 (2007), the court held that to establish causation a plaintiff must “establish that, but for the defendant’s unfair or deceptive practice, the plaintiff would not have suffered an injury.” See also id. at 82; Young, supra, slip op. at 12. Presumably, this proximate cause standard is less onerous than one requiring proof of reliance.
2. Article I, §12 provides: “No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.”
3. Article II, §35 states: “The legislature shall pass necessary laws for the protection of persons working in mines, factories and other employments dangerous to life or deleterious to health; and fix pains and penalties for the enforcement of the same.”
4. The privileges or immunities “reasonable grounds” requirement asks whether the particular legislative determination in fact serves the Legislature’s stated goal. See Young, supra, slip op. at 15. This test is more exacting than equal protection “rational basis” review, under which the court is allowed to hypothesize any conceivable rational basis justifying the particular legislative treatment. See id. and Young, Stephens, C.J., dissenting, slip op. at 37 n.9.
5. The dissent authored by Justice Stephens also examines and dismisses the notion that a worker’s right to work and earn a wage is itself a fundamental right, rejecting the superior court’s analysis to this effect. See Young, Stephens, C.J., dissenting, slip op. at 22-26.

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A Decision to Keep Families Together

Shortly after her appointment to the Whatcom County Superior Court in 2015, Judge Raquel Montoya-Lewis attended Washington’s Judicial College, where she heard the principle that the law is “external,” an absolute that stands separate and apart from any personal life experience. “The goal,” she was told, “was to leave who you are behind” when writing an opinion.

But Justice Montoya-Lewis, now a member of the Washington Supreme Court and the first Native judge to serve on the state’s highest tribunal, found she couldn’t follow that principle when she drafted the opinion for a unanimous court interpreting a core provision of the Indian Child Welfare Act (ICWA) and its Washington counterpart. She grounded the decision on the plain language of the relevant statutes and the rules of statutory con-
struction in federal Indian law, but she also relied on her personal knowledge of the deep harms this act was meant to address. She wrote about ICWA as a Native woman—an enrolled member of the Pueblo of Isleta in New Mexico—who grew up hearing stories about families torn apart by what she calls in the opinion the “historical and persistent state-sponsored destruction of Native families and communities.” In re Dependency of Z.J.G and M.E.J.G., 196 Wn.2d 152, 157, 471 P.3d 853 (2020).

This decision—which requires courts to adopt a broad interpretation of the “reason to know” standard when determining if a child is or may be an Indian child—has been celebrated by those who care deeply about the protections afforded to Native families under ICWA. In a Seattle Times commentary, Pierce County Superior Court Judge Kitty-Ann van Doorninck, King County Superior Court Judge (ret.) Helen Halperton, and Tulalip Tribes Chief Judge (ret.) Ron Whitener hailed the decision for the way it addressed the full meaning of ICWA. “The 9-0 ruling reminds us of the 300-year trauma inflicted on Native families and its lasting impact. And Justice Montoya-Lewis tells that history through the voices of those who lived it,” the three judges wrote.1

Justice Montoya-Lewis said she felt she had little choice but to bring her life experience to the case before the court. “I don’t know a Native family anywhere who doesn’t have a story of children who were lost to the foster care system or the institutional boarding school system. So when I said it is a living part of our community, I meant it. It is in no way theoretical. And it is not theoretical for me,” she said. “I felt incredibly lucky to get the opportunity to write the opinion in this case,” she added. “I saw it as an opportunity to write not just about the specific rule in question, but about the history behind it.”

A History of Cultural Genocide
Passed by Congress in 1978, ICWA was an attempt to end a painful chapter in U.S. history—the practice, at first informal and eventually systematic, of removing Native children from their families, destroying, in the process, Native families, communities, and cultures. According to Margaret Jacobs, a history professor at the University of Nebraska and author of A Generation Removed: The Fostering and Adoption of Indigenous Children in the Postwar World, it was a practice often dressed in the guise of “benevolent rhetoric.” But in fact, she said during a recent talk at the King County Department of Public Defense, “The use of family separation was a way to control, discipline, punish, and manage Indigenous people.”

The removal of Native children dates to the early 19th century, when settlers would take children orphaned by the long and brutal military campaign against Native people into their homes. Even Andrew Jackson, infamous for his role in the forced removal of tens of thousands of Native Americans from the South, adopted an Indian baby after U.S. forces killed his mother during a raid in 1813.2 It became a government-led practice in the late 19th century, when the federal government began establishing Indian boarding schools, modeled after the Carlisle Boarding School in Pennsylvania.3 Over the course of several years, the government established 156 boarding schools; another 100 or so were created by missions and church organizations. Jacobs found that nearly 80 percent “of all Indian children were at one time attending one of these boarding schools,” some of which remained open through much of the 20th century.

But the schools were expensive and ultimately controversial, Jacobs noted. As they began to close in the 1950s, government-sponsored removal of Native children took on a new form: foster and adoption placements, led by state and private adoption agencies.4 The impact was devastating. In some states, including Washington, between 25 and 35 percent of Indian children were in foster, adoptive, or institutional care, according to statistics cited in the Dependency of Z.J.G. opinion.5 All of these removals occurred without due process or any notice to the tribes, a state-sanctioned policy “intended to destabilize Native communities and ultimately end them.”6

In the 1960s and 1970s, with the birth of the American Indian Movement, Native people—led largely by grandmothers who had witnessed the removal of countless children—began a campaign to end this practice. After a 10-year effort that included the painful testimony of parents whose children had been taken from them, Congress passed the Indian Child Welfare Act. Jacobs called it “one of the most fierce and successful battles for Indian self-determination of the 1970s.” The need for this legislation was also stark: At the time of ICWA’s passage, Native American children were eight times more likely to be placed in foster care than non-Native children.

Court-Created Exceptions Dilute the Protections of the ICWA
ICWA sets a high bar for the court in a dependency proceeding, when the state is seeking to remove a child from a family. It imposes heightened standards for removing Native children, mandates the state to offer intensive services to families, promotes placement with family and community, and pulls tribal governments into the proceedings by requiring tribes to be notified if there is “reason to know” a child is an Indian child. It has been called the gold standard in child welfare policy, not only for the way it protects Native children from separation from their families and tribes but also for the way it helps safeguard the very existence of tribal governments.

According to Kathryn E. Fort, director of the Indian Law Clinic at the Michigan State University College of Law, when ICWA is invoked, “It largely works.” Tribes have developed stronger child
welfare programs over time, built up their legal teams, and become increasingly adept at the intricacies of dependency law. State courts, too, have learned how to apply the law. Ron Whitener, the former Tulalip Tribes chief judge, concurred, noting that the significance of ICWA to Native people can hardly be overstated. “It’s been like an emergency dam, thrown up to try to stop this gushing of Indian children away from their Indian communities,” he said.

But the law only works if it is called into play, and therein lies the rub: Over the years, state courts have sidestepped ICWA’s demanding standards. Writing for the court, Justice Montoya-Lewis discussed this history in *Dependency of Z.J.G. and M.E.J.G.*, noting one of the most well-known examples of a state court’s erosion of ICWA: the so-called “existing Indian family” exception, created by the Kansas Supreme Court in 1982. The exception—a adopted by the Washington Supreme Court in 1992—allowed a state court to deny ICWA protections if it determined the child had never been a part of an “existing Indian family”—a family, as Justice Montoya-Lewis put it, that could demonstrate its “Indian-ness.”

The Washington Supreme Court overruled its 1992 decision in 2016, a recognition that its previous analysis undermined ICWA’s efforts to redress historic wrongs. That was also the year former President Barack Obama’s administration issued regulations clarifying ICWA requirements, establishing standards to support consistent ICWA application nationwide. Among other things, the regulations clarified that when there is a “reason to know” that the child is an Indian child, the court must not only notify the tribe about a dependency proceeding but also apply ICWA until the tribe determines whether the child is an Indian child.

A Watershed Case

It was in this context that *In re Dependency of Z.J.G. and M.E.J.G.*, addressing correct interpretation of ICWA, came before the Washington Supreme Court last summer. At issue was the very standard the 2016 regulations sought to clarify: whether there was “reason to know” that two children the state sought to remove from their parents in a dependency proceeding were Indian children. The parents testified in King County Superior Court during a shelter care hearing (the first legal proceeding in a dependency case) that they were of Native heritage. The mother said she was of Tlingit-Haida heritage, eligible for membership in the Klawock Cooperative Association in Alaska; the father said he had Native heritage with the Confederated Tribes of the Umatilla in Oregon. But the trial court did not invoke ICWA, finding it didn’t apply because the parents’ testimony lacked sufficient detail. The children were removed by the state and placed in a non-tribal foster home, despite the availability of culturally appropriate placements. After almost a month in foster care, the children’s relationship to their tribe became clear when the Tlingit and Haida Tribe intervened in the case.

The children’s father sought discr eptionary review, arguing that the “reason to know” standard should be interpreted broadly by the courts and adopted early—during a shelter care hearing—for it to have meaning. The Court of Appeals upheld the trial court’s order. The father appealed to the Supreme Court, which accepted review. Last June, attorneys for the parents, tribes and state squared off—Tara Urs, an attorney for the King County Department of Public Defense, arguing on behalf of the parents, Kathryn Fort on behalf of the Tlingit and Haida Tribe, and Assistant Attorney General Peter Gonick on behalf of the state.

The Washington Supreme Court issued its unanimous decision on Sept. 3, 2020, mandating a broad interpretation of ICWA’s “reason to know” standard, noting that such a holding respects “a tribe’s sovereign role in determining its own membership.” Without early and adequate notice, tribes cannot exercise their rights. In her 42-page decision, Justice Montoya-Lewis also addressed the broader context of ICWA, beginning her decision with words that resonated to those who care about the importance of family relationships: “In Native American communities across the country, many families tell stories of family members they have lost to the systems of child welfare, adoption, boarding schools, and other institutions that separated Native children from their families and tribes. This history is a living part of tribal communities, with scars that stretch from the earliest days of this country to its most recent ones.” The court’s understanding of the significance of ICWA, she wrote, is informed by “this history of removal and displacement of Native people from their communities.”

In the months since the decision was issued, many have noted its significance, and some—such as Judge Ron Whitener—have written about it. An enrolled member of the Squaxin Island Tribe, Whitener grew tearful as he discussed growing up hearing stories of his own community’s history of family loss and separation. “When you know so many people who experienced this, when you’ve been told about these things by your parents and grandparents and great-grandparents, a decision like this is a big deal,” he said. “Justice Montoya-Lewis is our first Native justice, and this was one of her first decisions. And it was a big one. It’s a watershed case.”

Anita Khandelwal, the director of the Department of Public Defense (DPD), also

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Leslie Brown is the communications manager for the King County Department of Public Defense (DPD). Prior to her position at DPD, she worked as a news reporter and editor for several years, winning numerous awards, including the ABA’s Silver Gavel Award for criminal justice reporting. She received her undergraduate degree in history from Whitman College, a master’s degree in journalism from Columbia University, and a master’s degree in legal studies from Yale University School of Law. She can be reached at Leslie.Brown@kingcounty.gov.
hailed the decision, noting that it is already making a difference in the courts where DPD’s attorneys practice. “Public defenders in dependency cases play a critical role in keeping families together and pushing back against family separation,” she said. “This law and this decision give us an important tool to help us do that. We’re working hard to ensure that this decision is carried out in letter and in spirit.”

Justice Montoya-Lewis knows the decision has had an impact, in part because of the way she wrote it—the narrative form and authentic voice she brought to it. But as Khandelwal noted, she said, what also matters is how the high court’s decision influences the world of courtroom procedure, where a correct application of the law can make a profound difference to tribal governments, Native people, and the lives of vulnerable children. “What I hope people take away from it is that ICWA is more than just checking a box,” Justice Montoya-Lewis said. Noting the Court’s decision to interpret “reason to know” broadly, she added: “I’m quite certain that there are people working in this field who think, ‘Now I have to do more.’ But that is what ICWA was intended to do, to identify any and all Native children in the foster system. I hope this opinion makes that clear and pushes us as a state to do a better job.”

NOTES
4. The Child Welfare League of America played a significant role in this campaign, apologizing in 2018 for “this hurtful, biased and disgraceful course of action.”
5. 196 Wn.2d at 165.
6. Id. at 165.
7. Id. at 169-70.
8. Id. at 169.
9. Id. at 171.
10. Id. at 186.
BEYOND BLACK HISTORY MONTH

Reviving—and making—Black history in Washington and beyond: An interview with blackpast.org creators Dr. Quintard Taylor and State Representative Jamila Taylor
It was after now-retired University of Washington professor Dr. Quintard Taylor returned from a visit to Siberia that he decided to create a website dedicated to African American and global African history.

The website, www.blackpast.org, officially launched in 2007 and has now seen about 43 million visitors. Nearly 900 contributors have created more than 6,000 entries on the site, which hit its highest ever annual viewership in 2020—6 million readers. The site contains entries on African American people throughout history from Malcom X to former Washington Supreme Court Justice Charles Z. Smith to former mayor of Tacoma and now U.S. Representative Marilyn Strickland. It also contains entries on historic events, original historic documents, and articles on major civil rights laws and Supreme Court decisions affecting Black people in America.

Blackpast.org started as a list of encyclopedic articles on Dr. Taylor's faculty page on the University of Washington's website. “That information, even as small and limited as it was, that information was going around the world,” Dr. Taylor told Bar News. “And it’s because it was going around the world that students in Siberia contacted the Russian government and said, ‘We are using this website. We’d like to bring the founder of this website to Siberia.”

Dr. Taylor took up the students’ invitation. “It was an amazing experience,” he said. “I learned that people in Siberia know a lot more about America, and even a lot more about African Americans, than a lot of people over here.” The trip showed Dr. Taylor that the interest in African American history was truly global and confirmed to him that resources on the topic just weren’t widely available. So he decided to expand his small faculty webpage—with the help of his daughter, Jamila Taylor, and others. Jamila, a WSBA member and lawyer—most recently with the Public Defender Association and now a Washington state representative for the 30th District—was a founding board member of BlackPast. Rep. Taylor currently serves as Chair of the Black Members Caucus; she will lead the largest group of Black legislators in Washington’s history. She and her father recently spoke with Bar News on a wide range of topics including BlackPast and Black History Month; an edited transcript of the Dec. 22, 2020 interview follows.

Q: Dr. Taylor, how and why did you start blackpast.org?
Quintard Taylor: It goes back to a concern that I’ve had ever since I was a child, and that was the absence of African American history in the public sphere. Yes, there were individual African Americans and churches and social groups and sororities and fraternities who tried their best to keep African American history alive, who tried to pass on that story, but it was often sporadic and haphazard through no fault of their own. That wasn’t the central motivation for these organizations.

I grew up in Brownsville, Tennessee ... a predominantly Black town in an overwhelmingly Black county. And I can’t remember, except for the stories that my mother passed down to me, any kind of African American history being taught to me as a child. It just didn’t exist. And in fact, I didn’t have a formal African American history course until I was a senior in college, and I went to a predominantly Black school.

And so by the by the beginning of the 21st century with the rise of the internet, I began to think, how can we take this history that I have been teaching for decades—how can we take it out of the college classroom, out of the ivory tower, and make it available to everybody?

And that’s when we came up with the idea of a website.

Blackpast.org was launched on Feb. 1, 2007. ... And we thought, OK, we put this information out. And maybe we get a few thousand people. The website actually crashed the first day, because there were so many people coming to it. We had 199,000 people come to it the first year.

And of course, we are also, and I want to make this very clear, we are a website on African American history, but we’re also a website on global African history.

There are very few countries in the world that are not connected to the experience of people of African ancestry. The Black experience is a worldwide experience.

Jamila Taylor: Can I add this little piece about part of your origin story? I remember when I was much younger, my dad said...
to me, “One day Jamila, I hope you and I will write a book on Black history together.”

And I heard him, but I was like, I’ll never be a professor of Black history like he is or do the work that he’s doing because that just wasn’t my pathway. But that idea stuck with me. I felt that in this moment, when my dad was telling me about this website, and then seeing it come together, I realized that this is the book that my dad and I never wrote.

Q: Can you speak to the importance of the tradition of Black History Month in 2021? And in particular, why do you think legal professionals should be reading about Black History Month in this magazine?

QT: I think members of the legal profession should know Black history because I think everybody should know African American history because African American history is a fundamental part of American history.

I have mixed feelings about Black History Month. As we say at BlackPast, every month is Black History Month. And I get concerned when people try to compartmentalize the discussions of the African American experience into a single month.

But at the same time, I recognize that celebrating the month is a golden opportunity because for the longest time, that is up until relatively recently, people weren’t recognizing Black history, until it was introduced to them by Black History Month. So that being said, I could understand how it would be important for lawyers, attorneys, judges, along with everyone else to be aware of African American history.

Let me share with you some statistics that say something about the legal profession in America today. I went back to 1960 and I found out that there were 285,933 lawyers in the U.S. and that meant that there was one attorney for every 627 people in America. In 1988 there were 723,189 attorneys—in other words there was a dramatic increase in the number of attorneys. At that point it was one attorney for every 339 people in the U.S. But by 2020, we now have 1,328,692 attorneys, or one attorney for every 247 people in the U.S. And so there’s been a dramatic expansion of the legal profession. I mean, it’s spectacular.

But here’s the statistic that I think we have to bear in mind as well: In 1960, only 2 percent of the attorneys across the U.S. were Black. In 1988 that percentage had risen all the way to 3 percent. Today, it’s all the way up to 5 percent.

So even though there is a much larger number of attorneys, the underrepresentation of African Americans in the profession continues into this era. I think people in the legal profession need to understand that.

Q: In what other ways do you think we should be acknowledging and educating people about Black history, outside of Black History Month?

JT: I think part of it’s addressing the curriculum that’s in our public school system—in particular, supporting efforts for ethnic studies, Black history studies. How do we incorporate it into our everyday language? How do we incorporate it into our education from K-12, legal education, medical education? Because we see how these disparities are coming to the surface. We’ve been talking about these disparities for years. We talk about health equity and access to health care, and now with the pandemic we are able to see how it all ties together.

So for folks like me, we’re not looking to go to a new normal after the pandemic is over. We’re looking
to go to a new possibility and that requires us to also look at the past. To look at our historical roots that led to where we are with these disparities. Environmental justice is tied to racial justice is tied to labor justice is tied to all other systems. So how do we undo these things that create so much inequity in our society?

Q: I think the other thing too, and we should always remember this when we talk about Black history: Yes, there’s a lot about the struggle and the strain placed on African Americans to exist in a society that is basically racist, but there are also some amazing stories of courage and the ability to overcome obstacles. And I’m inspired by them. As a matter of fact, I confess that as much as I knew about racial discrimination, I didn’t know about some of these stories of people who overcame that. Now that’s not to say that we ought to stop the effort to try to eliminate racial discrimination, but it’s to say that we need to understand all those stories.

Q: Dr. Taylor, how did your career and academic interests develop?

A: I was teaching African American history at Washington State University, and in my very first class there in 1971, I was lecturing on what I thought was the standard African American history and one student—he’s a doctor now—named Billy Ray Flowers, raised his hand and said, “Why is it when you people talk about African American history, you only talk about Blacks in the south and Blacks in the east?”

And I was young, I was 22 years old. I have to admit I was a bit arrogant, and I said, “Because there is no African American history anywhere else.” And he begged to differ with me. He talked about African American history in the West, and particularly in Oregon in his hometown of Portland, and I was just fascinated. I listened to him, and the rest of the class listened to him. And I was mesmerized by the fact that his family, his own family, had come to Oregon in the 1860s.

Having grown up in Tennessee and having been educated in North Carolina and Minnesota, I didn’t know anything about this. And so I just became fascinated with the topic and to make a long story short,
SIDEBAR

BLACK MEMBERS OF THE WASHINGTON STATE LEGISLATURE, 1890-PRESENT

Did you know that William Owen Bush served in the state’s first legislature and co-sponsored a bill establishing Washington State University? Or that Peggy Maxie was the prime sponsor of the Landlord-Tenant Act of 1957? Learn more about these and other local elected Black officials at blackpast.org.

Successfully argued against an interracial marriage ban.  
John H. Ryan  
Republican  
1889-1889  
At-Large*  
Olympia

Co-sponsor of the Civil Rights Omnibus Bill of 1957.  
Charles M. Stokes  
Democrat  
1951-1954  
House 37  
Seattle

Sponsored SB 6095, which created the UW-Tacoma campus in 1989.  
Bill Smitherman  
Democrat  
1983-1986  
House 26  
Tacoma

Introduced SB 5584, which created the Washington Housing Policy Act of 1993.  
Rosa Franklin  
Democrat  
1989-1990  
House 26  
Tacoma

Introduced HB 1868, which provided medical insurance for police officers and firefighters.  
Eric Pettigrew  
Democrat  
2013-2014  
House 30  
Federal Way


Beyond Black History Month

CONTINUED >

at the end of the academic year I actually secured a small grant from Washington State University that allowed me to get a tape recorder and a state car to go out and begin to interview African Americans. Interestingly, not in Seattle or Portland, but literally up the road from Washington State University. There were Black farmers who had settled, who had homesteaded land near Pullman, Washington, at that point 80 years earlier, and their descendants were still there. And so I began to interview them.

And later I expanded my focus to the big cities, but I started my research on African American history, literally in the shadow of Washington State University in Pullman.

Q: Rep. Taylor, why did you decide to become a lawyer?

JT: My parents have instilled in me a sense of public service and being involved in community and helping people. ... And then, of course, being an academic household, we talk about history. We talk about social events. If you were to come to Thanksgiving or Christmas dinner, it’s a lively, lively conversation with us.

So I was very much interested in being able to become an advocate that could do good work in the community. I didn’t immediately go into the law from undergrad. I went and worked in the private sector. I thought I was going to be a business owner and then I realized that I needed to go
back to school and find pathways to get into leadership and get into other ways of building my career.

And so I got admitted to the University of Oregon School of Law. It was like coming home. My mom and my brother were still in the area and I just dove into the legal profession and all the things that it had to offer.

Q: Since you became a lawyer, what has your work entailed?
JT: I thought I was going to go into corporate law, but I graduated in 2007 and passed the bar in 2008, and as you can imagine what happened in that time, there was the Great Recession and I was not able to find a traditional litigation job. So I went in a direct different direction. I took a position with the Urban League as the director of the youth violence prevention program working in the Central District [neighborhood of Seattle] and it had me seeing how policies were being made that affected everyday lives and seeing how a community could be involved in shaping and affecting the lives of our young people.

At a certain point I realized that I wanted to practice law and litigate and so I transitioned into family law practice. I took a position in 2017 with the Northwest Justice Project in their victims of crime program essentially doing anti-domestic violence advocacy and helping folks with their protection orders, family law matters, and things like that. And I eventually was promoted to a statewide advocacy council, working on policy.

I just love being in public interest and working with prosecutors, judicial officers, public defenders, and seeing how all these systems interplay. How do we
come up with solutions that actually work ourselves out of a job?

Q: Why did you end up deciding to run for public office?

JT: When I was working in the youth violence prevention initiative, I saw how the policies were being made at the city of Seattle and I realized, I could do that. But also being in the Northwest, being that there are very few African Americans who are in elected office, I wasn’t sure that there was a pathway. You have to raise a lot of money or have social circles that would get you the influence to get the resources that you needed. I decided to get involved in many training programs and support programs that would help me get closer and closer to doing that very thing.

But still, being an African American woman even in this day and age, I didn’t think it was within my grasp, until I saw my best friend Judge Nicole Phelps win her election. She was running for a superior court position in 2016 and to that date, I think she became the first African American to win an open seat for superior court judge in the state of Washington. She had heard from so many people in her circle and outside of her circle, people who are well meaning, who said you can’t win in an election for an open seat. But she did and she won handily. And so when I saw that possibility, being a person of color winning an election of that stature in this area, I knew that it was within my grasp. I knew that I could do the same thing. So I put more of my energy into making it happen. And of course, my father was absolutely an influence. Both my parents were.

QT: I think one of the things that I noticed, my generation in some ways was the generation that looked at the problems, looked at the situation, and certainly we as historians, we had a responsibility for telling the history of discrimination, saying these are the things that were wrong. One of the reasons I’m proud of Jamila’s work is that Jamila now has the opportunity to put solutions to those problems. She is part of that next wave—that generation of people who will say yes, we understand that there are these problems, but now it’s time for us to fix them. And so that’s why when she said, “I’m running for the Legislature,” it did make me very, very proud.

Q: You’ve got recent African immigrants for advocating for a community are different. You’ve got recent African immigrants who have a different lived experience than the folks who are African descendants of enslaved people.

QT: One of my books, The Forging of a Black Community, it’s now about 27 years old—really focused on a phrase that a friend of mine said: “In Seattle and in Washington, we practice the illusion of inclusion.” What he meant by that is that there are all these progressive people who spout progressive ideas and yet at the same time underlying that is a kind of a systematic exclusion of African Americans from power and from their own rights. We don’t expect this in Washington. We expect it in a place like Mississippi. We assume that it exists in a place like Georgia.

I think this will be meaningful to those who are in the legal profession: More Black people, more Black men per capita are incarcerated in the state of Washington than in the state of Alabama.

There’s the illusion of progress. There’s the illusion of inclusion.

Notes:

2. www.blackpast.org/african-american-history smith-justice-charles-z-1927/
8. According to the Prison Policy Initiative, there are 2,372 Black people incarcerated per 100,000 Black people in Washington; there are 1,788 Black people in prison per 100,000 Black people in Alabama. More information at www.prisonpolicy.org/reports/pie2020.html.

“More Black people, more Black men per capita are incarcerated in the state of Washington than in the state of Alabama.”

— Dr. Quintard Taylor
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The esteemed Snohomish County Bar Association (SCBA) president, Cory Rein, asked if I would be willing to provide the membership with my perspective on recent events that have impacted our profession, our state, and the world. While I suspect this is Mr. Rein’s attempt to pawn work off on me; nevertheless, I will share my perspective in the hopes that some will find value. I do not claim to speak as the representative for anyone else.

To date, 2020 has been a challenging year for us all. Many of us, especially small/solo practitioners, are trying to survive the impact that COVID-19 has had on our businesses. Some have been personally impacted by the virus either through their own illness or the sickness or even death of a loved one. At times, given the divisiveness and rancor that fills the airwaves these days, I have wondered if we are in the dawn of the last day of our society and if this time period, much like our study of the ancient Roman Empire, will be the era that future historians peg as the beginning of the end of this country as we know it.

In conjunction with the pandemic-induced economic challenges, the intense public protests and reactions to the recent deaths of George Floyd, Breonna Taylor, David McAtee, and others have thrust the issue of race to the forefront of our daily lives, again. Some have asked me: How do you feel about what’s going on? My answer, in short: sad, angry, confused, frustrated, and tired. It is sad to think that it has been over 60 years since my parents and grandparents sought equal rights, and yet still in 2020 the need to protest remains. It is disheartening to know that soon I will be forced to explain certain “rules” to my son as he starts to drive, or even go into stores alone—the same rules that have been shared from generation to generation in my family since the end of the Civil War. As one with an industrial engineering degree, I strive for efficiency; therefore it is frustrating to see wasted opportunities and losses. As someone trained in statistical process control, the available data (overall economic indicators, deaths of unarmed citizens, pessimism regarding country, etc.) depict a system in need of care. Equally concerning is that rather than engaging in real discussions, people have hunkered down into social media silos and rarely venture out to learn and value different perspectives. For many, the social

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As a profession, we have an opportunity to help drive both the discussions and the laws in the direction needed to help this country heal. However, altering laws will not change what is in a person’s heart and soul; that change must be driven by one’s faith and value system.
Prior to the election, cases were filed in multiple states related to voting—involving issues such as lack of ballot boxes, extra days of early voting, witness requirements, and cutoff dates for counting mailed ballots. During the election, the Donald Trump campaign sued to try to stop the vote count in cities in Michigan and Pennsylvania. The suits in both states were dismissed. And after the election, lawsuits alleging voter fraud were filed in Georgia, Michigan, Arizona, and Pennsylvania.

Again, none of this is new. Attempted voter suppression is as old as the United States. From the days of Jim Crow to pre-19th Amendment to the 1965 Voting Rights Act, the ruling political classes often fought to limit voting freedom. The American Civil Liberties Union noted that such attempts grew in intensity when Barack Obama was running for president:
In 1940, Thurgood Marshall established the Legal Defense Fund (LDF) arm of the NAACP, which began to take on segregation and Jim Crow laws in court. In 1954, the U.S. Supreme Court’s decision in Brown v. Board of Education ruled that segregation in public schools was unconstitutional, and brought an end to the “separate-but-equal” doctrine in education.

Still, there was work to be done. Through protests and marches, many brave citizens were arrested and even died working toward voting equality. Dr. Martin Luther King Jr. brought hundreds of Black people to the courthouse in Selma, Alabama, to register to vote in 1963 and 1964. During this time, Dr. King organized and led protests that helped to finally bring about the 1964 Civil Rights Act, and the 24th Amendment prohibited the use of poll taxes. In 1965, the Voting Rights Act directed the attorney general to enforce the right to vote for Black Americans.

The Voting Rights Act prohibited states from using literacy tests and other methods of voter suppression, creating a significant change in the status of Black Americans. Prior to this, only an estimated 23 percent of voting-age Black citizens were registered nationally, but by 1969 the number had jumped to 61 percent.

The Voting Rights Act was necessary to secure the right to vote for all citizens. However, it is still being attacked and weakened through various voter-suppression tactics and litigation.

In 1987, Justice Thurgood Marshall gave a speech as part of the constitutional bicentennial celebration. He attacked the celebration itself, disparaging the so-called “wisdom, foresight, and sense of justice exhibited by the Framers.” He said:

To the contrary, the government they devised was defective from the start, requiring several amendments, a civil war, and momentous social transformation to attain the system of constitutional government, and its respect for the individual freedoms and human rights, we hold as fundamental today. When contemporary Americans cite “The Constitution,” they invoke a concept that is vastly different from what the Framers barely began to construct two centuries ago. For a sense of the evolving nature of the Constitution we need look no further than the first three words of the document’s preamble: “We the People.” When the Founding Fathers used this phrase in 1787, they did not have in mind the majority of America’s citizens. “We the People” included, in the words of the Framers, “the whole Number of free Persons.” On a matter so basic as the right to vote, for example, Negro slaves were excluded, although they were counted for representational purposes at three fifths each. Women did not gain the right to vote for over a hundred and thirty years.

Three years ago, the NAACP completed “report cards” on voting rights for all 50 states. Washington received high grades because of the state’s ability to vote by mail, which is seen as progressive and
NOTES
1. The NAACP was established in 1909, a year after the 1908 Springfield race riots. The Springfield race riots were the first to occur in 50 years in the northern part of the U.S. They began over accusations of rape involving a black man and a white woman. In the end, "six black people were shot and killed, two were lynched and hundreds of thousands of dollars’ worth of property destroyed. About 2,000 black people were driven out of the city of Springfield as a result of the riot." More information available at www.blackpast.org/african-american-history/springfield-race-riot-1908/. The work of the NAACP began with anti-lynching, anti-segregation, and voting initiatives.


Washington is not, however, exempted from a history of voter suppression. Much of our state’s history encompasses segregation. In many areas of the state, Black people were excluded from certain jobs, many neighborhoods and schools, and many stores, restaurants, hotels, and other commercial establishments—even hospitals. The local branches of the NAACP in Seattle and the surrounding areas worked to address these issues under the leadership of the late Judge Charles V. Johnson, who served as president of the Seattle Chapter, the state area conference president, and on the organization’s national board.

Although much progress has been made in the way of incremental voting rights, Black citizens continue to face attempts at voter suppression in both familiar and novel ways. As strategies to disenfranchise certain groups persist and evolve, so must the work to secure the right to vote for all Americans—in Washington state and across the country.
9. Id.
19. The annual legislative report card can be viewed at www.naacp.org.

Christine Kuglin, J.D., LL.M., is as an assistant professor at Eastern Washington University where she serves on the Women and Gender Commission. In 2020, she was appointed by the Washington State Bar Association to serve on the Pro Bono and Public Service Committee.

Tracy Flood, J.D. LL.M., is in private practice in Bremerton. She is vice president of the Washington State Bar Foundation, WSBA representative to Civic Learning Council, Loren Miller Bar Association, and President of NAACP Unit 1134 Bremerton/Kitsap. She is also a past member of the WSBA Board of Governors.

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Bright v. Frank Russell Investments, 191 Wn. App. 73, 361 P.3d 245 (2015)

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The COVID-19 Rescue Package That Arrived Before the Virus?

A LOOK AT SUBCHAPTER V TO CHAPTER 11

BY CHRIS CHICOINE

NOTE: Versions of this article originally appeared in the October 2020 edition of the Snohomish County Bar Association News and in the November 2020 issue of the King County Bar Bulletin.

According to the International Monetary Fund, U.S. unemployment hit 10.4 percent as of June 29, 2020. It was 3.7 percent at the same time the previous year. In response, Congress passed the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), providing nearly $3 trillion in financial relief to offset the economic impact of COVID-19. Talks of another stimulus are ongoing [as of this writing], but perhaps the most effective financial relief tool doesn’t involve the government going further into debt.

Enter the Small Business Reorganization Act of 2019 (SBRA), signed into law on Aug. 23, 2019, and effective Feb. 29, 2020, which added Subchapter V to Chapter 11 of the Bankruptcy Code. Subchapter V is meant to fast-track the restructuring process of Chapter 11, making it a much more affordable, viable option during tough times. To understand how powerful a rescue tool Subchapter V may prove to be, you need to understand a bit of the procedural, substantive, and practical challenges a debtor faces in a traditional Chapter 11.

TRADITIONAL CHAPTER 11

Confirming a Chapter 11 plan of reorganization is the endgame for debtors. The Chapter 11 plan modifies a debtor’s pre-bankruptcy creditor agreements. To get there, the debtor must navigate a procedural gauntlet that is neither cheap nor easy. Here’s a quick look at the process and some of its hurdles:

U.S. Trustee’s Office (and its fees)

Unless removed for cause, the Chapter 11 debtor is technically the “debtor in possession” (DIP) with the right to continue to run its business and manage its affairs. The DIP is akin to and has all the powers of a Chapter 7 bankruptcy trustee. Because of this, the U.S. Trustee (UST) provides case oversight that might otherwise be lacking. The UST’s services are funded by quarterly fees imposed on the DIP.

Creditors’ Committee

Section 1102 provides that the UST shall appoint a creditors’ committee to represent...
The small business case filed under Subchapter V streamlines the process and makes it much more cost-effective.

Disclosure Statement
Before a debtor can solicit votes on its Chapter 11 plan, the debtor must file and obtain court approval of a disclosure statement. The disclosure statement must provide “adequate information” concerning the assets, liabilities, and affairs of the debtor to enable creditors to make an informed vote on the plan. This can be a significantly expensive process that is not worth the cost. Creditors typically decide whether to accept a plan’s treatment of their claims based on what’s in the plan, not the disclosure statement. And at this point, creditors are well versed in who the debtor is, why it is in bankruptcy, and what it wants to do.

Impaired Accepting Class
For confirmation, a plan must satisfy the requirements set forth in §§ 1129(a)(1) through (a)(16). Often the most formidable requirement, §1129(a)(10) precludes confirmation unless an impaired class of creditors has voted to accept a plan. The idea behind § 1129(a)(10) is that Chapter 11 plans should only be confirmed if there is a
The COVID-19 Rescue Package That Arrived Before the Virus?

CONTINUED >

sufficient level of consent among creditors. A claim is impaired if a creditor’s rights are altered in any way under the plan. Since creditors typically don’t want to get paid less than what they might otherwise get outside of bankruptcy, this is often a tough, expensive hurdle to overcome.

Absolute Priority Rule

The absolute priority rule provides that a plan can be confirmed over the rejection of an impaired accepting class as long as it is “fair and equitable” as to such class. For unsecured creditors, this means principals of the debtor may not retain property under the plan unless and until unsecured creditors are paid in full. Courts have held the absolute priority rule applies to both individual and small business debtors in a traditional Chapter 11. Although courts have also held that pre-petition equity can be retained so long as principals contribute “new value,” at a minimum this equity stands to be significantly reduced by the traditional Chapter 11 process. Although many initially thought that the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) amendments eliminated this requirement for individuals, courts ultimately ruled otherwise.³

Competing Plans

If the debtor has not already confirmed a plan, creditors can present their own plans of reorganization of the debtor once 120 days have passed from commencement of the case. These plans can be highly unfavorable to the debtor if confirmed.

Professional Fees

Professionals providing a benefit to the estate are entitled to file administrative expense claims for their fees. These include fees of debtor’s counsel, any trustee appointed and his/her attorney, and creditor’s committee counsel. Unless the holder of such claim and the debtor agree otherwise, such claims must be paid in full upon confirmation of the plan.

SUBCHAPTER V CHANGES TO CHAPTER 11

Eligibility

Only a “small business debtor” is eligible for Subchapter V relief. This can be a business or individual, provided it is “engaged in commercial or business activities with noncontingent, liquidated secured and unsecured debts” of not more than $2,725,625. This figure will increase with inflation every three years. Pursuant to the CARES Act, effective March 27, 2020, the debt ceiling was increased to $7,500,000 through March 26, 2021.

The small business case filed under Subchapter V has the following features compared to its traditional Chapter 11 counterpart, which streamlines the process and makes it much more cost-effective:

- **No Creditor Committee**: Although the court may appoint one for “cause.”⁴
- **No U.S. Trustee fees**:⁵ The UST will appoint a standing trustee with limited duties, all basically aimed at facilitating plan confirmation.⁶ These include appearing at hearings concerning lien cram downs, plan-confirmation issues, sales of property, and/or collecting funds from the debtor to disburse plan payments.
- **No disclosure statement**: The requirement to file and obtain court approval of a written disclosure statement is gone.⁶ A plan must provide a liquidation analysis and overview of the debtor’s business operations.⁸
- **No impaired accepting class requirement**:⁹ Along with the elimination of the absolute priority rule, this is a game changer.
- **No absolute priority rule**: Both the principals of the small business debtor and the individual debtor can retain their pre-bankruptcy equity in the debtor without paying unsecured creditors in full,¹⁰ provided disposable income is paid into the Chapter 11 plan over a period of between 3 to 5 years.¹¹
- **No competing creditor plans**: Only the debtor can file and confirm a plan.¹²
- **Administrative claims payable over time**: The administrative claimant can now be forced to accept payments over the life of the plan.¹³ In a traditional Chapter 11, such creditors must be paid in full on confirmation unless they agree to deferred payments.¹⁴
- **Residential mortgage modification (limited)**.¹⁵

Only time will tell how many will successfully utilize Subchapter V. On paper, however, it is hard to see it doing anything but having an enormously positive impact on struggling small businesses and individuals. It might be the ultimate COVID-19 rescue package that came before COVID-19.¹⁶

NOTES

3. Zachary v. California Bank & Trust, 811 F.3d 1191 (9th Cir. 2016).
6. 11 U.S.C. § 1191(a), (b).
7. Id. at §1187(c).
8. Id. at § 1190(T).
9. Id. at § 1190(b).
10. Id. at § 1190(a).
11. Id. at § 1199(b), (c).
12. Id. at § 1189(a).
13. Id. at § 1199(e).
15. Id. at § 1190(5).
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In Remembrance

This In Remembrance section lists WSBA members by bar number and date of death. The list is not complete and contains only those notices of which the WSBA has learned through correspondence from members.

Please email notices to wabarnews@wsba.org.

Robert Beckerman, #7309, 1/1/2021
Thomas Brucker, #424, 12/27/2020
Robert Downing, #3578, 10/15/2020
Michael R. Green, #1835, 10/6/2020
Donald L. Johnson, #1530, 12/16/2020
Egil Krogh, #9992, 1/17/2020
Russell J. Kurth, #25700, 10/14/2020
Anthony Lee, #5488, 11/19/2020
William Lenihan, #1373, 5/20/2020
Donald Peter Osborne, #7386, 11/6/2020
Randolph Osmond Petgrave, #2616, 10/13/2020
Frederick “Rick” Rasmussen, #5788, 12/25/20
Theodore Rosenblume, #2226, 10/11/2020
Anthony Shapiro, #12824, 11/16/2020
Stryder Wegener, #35408, 12/1/2020
Lynn Denise Weir, #9448, 12/1/2020
William Lee Williams, #6474, 6/13/2020

Slade Gorton

#20, 8/19/2020

Slade Gorton was born in Chicago in 1928. He completed his undergraduate studies at Dartmouth, earned his law degree from Columbia University, served in the Army from 1945-1946 and the Air Force from 1953-1956, and served in the Air Force reserves until 1980. Gorton retired as a colonel. He arrived in Seattle in 1953 and ran for office for the first time—for a House seat in Seattle’s 46th District—in 1958. He won that election and that same year married Sally Clark, who died in 2013. Overall, Gorton spent 40 years in public service. He served in the Washington state House of Representatives for 10 years, as Washington state attorney general for 12 years, and as a Republican U.S. senator for three nonconsecutive terms. Gorton was known as a consensus-builder in Congress, a passionate and controversial figure in the areas of environmental issues and tribal rights, and a lover of baseball (as attorney general, Gorton worked to save the sport in Seattle). He died at age 92 on Aug. 19, 2020. He is survived by two daughters, one son, two brothers, one sister, and seven grandchildren.

Charles V. Johnson

#4171, 12/29/2020

Charles V. Johnson was born in Arkansas in 1928. He served in the military for four years and eventually earned his law degree from the University of Washington School of Law, where he was the only Black person in his graduating class. Deeply passionate about civil rights, Johnson revived the Seattle Chapter of the NAACP in 1958 and went on to serve in a leadership role with the organization for 40 years. During the 1960s, Johnson participated in demonstrations against segregated housing—which eventually led to the Seattle City Council passing an open housing ordinance in 1968—and helped to integrate Seattle Public Schools. In 1968, he helped found the Loren Miller Bar Association. His legal career began in private practice and eventually led to a 30-year judicial career as a Seattle Municipal and King County Superior Court judge. “Judge Johnson inspired and mentored me and hundreds of young lawyers,” Seattle Mayor Jenny Durkan said in a statement released after Johnson’s death. “His sagacity, the compassion he showed for those who stood before his bench, and his dedication to improving the judiciary [have] made us a better city.” Johnson is survived by his wife, Lazelle, and three children.
Bloggers Wanted!

Write for the WSBA's award-winning blog — NWSidebar [nwsidebar@wsba.org]. Connect with the legal community! For more information, contact blog@wsba.org.

Rick Rasmussen
1943 - 2020

In Memoriam

With great sadness, we announce the passing of our friend, colleague, and mentor.

William N. Holmes, CPA / ABV / CVA / CFE

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TOP 10 MEETING TAKEAWAYS

1. In support of the rule of law and the peaceful transition of power. After a robust discussion, the Board passed a resolution stating “[W]e unequivocally condemn the political violence that disrupted the Joint Session of the U.S. Congress on January 6,” and asked members to unite around the foundational values of our nation: the rule of law and the peaceful transition of power.

2. Newly elected governor. After being certified as the winner of the runoff election, At-Large Governor Alec Stephens was sworn in for a second term that runs through September 2023.

3. Honoring former WSBA Executive Director Paula Littlewood. The WSBA mourns the loss of Paula Littlewood, who died from pancreatic cancer in December. Read more on page 10.

4. Diversity training planning. Social equity consultant ChrisTiana ObeySumner led Board members through some important groundwork to guide group expectations and interactions during the Board’s in-depth equity and anti-racism training, which will continue throughout the coming year (three major trainings, each three hours, completed by September).

5. WSBA Member Wellness. Program Manager Dan Crystal presented information about the WSBA’s Member Wellness Program. Board members enthusiastically expressed support for beginning work toward implementing recommendations from the ABA Commission on Lawyer Assistance Programs’ National Task Force on Lawyer Well-Being. WSBA Treasurer Dan Clark said funding for this program can likely be increased appropriately without increasing member license fees.

6. The future of work at the WSBA. WSBA Executive Director Terra Nevitt presented results from an employee survey that showed support for continuing to work remotely in a post-pandemic environment. Citing those findings, as well as research and experience that show strong worker productivity when working remotely, WSBA leaders are now embarking on long-term planning to set a direction for the WSBA offices. To begin the process, governors authorized the WSBA to list portions of its current office space for possible sublet to gauge the market.

7. WSBA Employee Climate Survey. The Washington Supreme Court last year asked the WSBA president and executive director to report back on the overall working climate at the WSBA. Since then, WSBA employees participated in a climate survey, the results of which were made available to Board members. Board members agreed there is much work to do to support a positive culture within the organization. The Board will now send the results of the survey to its Personnel Committee as well as the Supreme Court.

8. Access to Justice (ATJ) Board Annual Report. ATJ Board chair Francis Adewale and members Esperanza Borboa, Hon. Fred Corbit, and Terry Price presented highlights from the past year. In response to the ongoing triple pandemic of COVID-19, racism, and poverty, the Board’s work included adoption of a call to action and commitment to battle racism against Black communities and other communities of color; responding to growing legal needs...
during the COVID-19 pandemic; advancing the new ATJ Technology Principles and addressing the digital divide and prioritizing listening to and taking the lead from communities who are most impacted by marginalization.

2021 legislative update. Washington's 2021 legislative session began Jan. 11 and adjourns April 25. There are two WSBA-requested bills this year—both supported by the Business Law Section—SB 5005 (concerning business corporations) and SB 5034 (concerning nonprofit corporations); both had hearings in the Senate Law and Justice Committee in mid-January. In addition, we are tracking and monitoring more than 160 bills for WSBA Sections.

COVID-19 survey data. Board members received an executive summary of the initial analysis of survey data collected from WSBA members regarding the impact of the pandemic. The WSBA COVID-19 Response Task Force is continuing to delve into the survey results with two goals: to present the results in a transparent way to members and to meaningfully respond to member priorities and need for resources. A summary infographic of the survey results will be published in the March issue of Bar News.

Other business. The Board:
- Approved the contract for the executive director, a position that has been offered to Interim Executive Director Terra Nevitt. In the interests of transparency, the contract will be posted on the WSBA website when fully executed.
- Approved several WSBA Bylaw amendments; to clarify and increase the number of members of the Budget and Audit Committee and to align language with the Washington Supreme Court’s recent amendments to APR 3(g), Pro Bono Admission.

The WSBA Board of Governors is the governing body of the Bar. It determines the policies of the Bar and approves its budget each year. Subject to the plenary authority and supervision of the Washington Supreme Court and limitations imposed by Statute, Court Rule, Court Order or case law, the Board possesses all power and discretion on all matters concerning the WSBA.

OPEN POSITIONS

- District 1
- District 4
- District 5
- District 7 South
- At-Large* (Young Lawyer)
- President-elect*

3 Year Term: September 2021 - September 2024

*Filing deadline for the At-Large (Young Lawyer) and President-elect positions is April 20.

Look up your district at www.mywsba.org

Districts follow U.S. Congressional Districts and are based on your home address.

For more information go to: www.wsba.org/elections.
For questions, please contact: barleaders@wsba.org.

CAST YOUR VOTE

Congressional District Positions
MARCH 15 - APRIL 1

At-Large Position (Young Lawyer)
JUNE 1 - JUNE 15
WSBA NEWS

2021 License Renewal

Deadline was Feb. 1. If you have not completed all mandatory portions of your license renewal, including trust account declaration and disclosing professional liability insurance or financial responsibility, if applicable, you are delinquent and your license is at risk of administrative suspension. You may complete licensing requirements either online at www/licensing.wsba.org or by using the license renewal form. Visit www.wsba.org/licensing to learn more.

APEX Nominations

The deadline is March 15. Nominations are being accepted for the 2021 APEX Awards. Visit www.wsba.org/about-wsba/apex-awards to access the nomination form.

WSBA Board Feedback

Send your feedback to the newly created email address boardfeedback@wsba.org. Please note that all WSBA emails are subject to public records requests.

Receive Notice of Upcoming Board Meetings

Join the new board meeting notice subscription list to receive WSBA Board of Governors meeting notices straight to your inbox! To join, email barleaders@wsba.org or complete the form on www.wsba.org/about-wsba/who-we-are/board-of-governors.

Leaders Wanted

The annual WSBA volunteer application and selection cycle opens March 15. The WSBA and the legal community greatly benefit from the incredible dedication, skill, and knowledge of our 1,000 (and counting) volunteers. More information here: www.wsba.org/connect-serve/volunteer-opportunities.

Volunteer as Adjunct Disciplinary Counsel

Learn more about volunteering as an adjunct disciplinary counsel (ADC). ADCs assist as needed in carrying out the functions of the lawyer discipline system pursuant to Rule 2.9 of the Rules for Enforcement of Lawyer Conduct. An ADC must have been an active lawyer or judicial member of the WSBA for at least seven years at the time of appointment. Appointment is for a five-year term. Visit www.wsba.org/adc-panel or contact theaj@wsba.org to learn more.

WSBA Board of Governors Election

Applications are due Feb. 16. The following congressional district positions are open: districts 1, 4, 5, and 7 South. The election for the open congressional district positions will begin March 15. The application deadline for the at-large governor position representing young lawyers is April 20. The election for the at-large position will begin June 1. All materials and questions should be emailed to barleaders@wsba.org.

President-Elect Applications are due April 20. The WSBA Board of Governors welcomes any member interested in serving as president-elect. Send applications to barleaders@wsba.org.

Custodians Needed

The WSBA is seeking interested lawyers as potential volunteer custodians of files and records to protect clients’ interests. Visit www.wsba.org/connect-serve/volunteer-opportunities/act-as-custodian, or contact Sandra Schilling: sandras@wsba.org, 206-239-2118, 800-945-9722, ext. 2118; or Darlene Neumann: darlenen@wsba.org, 206-733-5923, 800-945-9722, ext. 5923.

RESOURCES

New Practice Guides Available


Information for Job Seekers and Employers

Visit the WSBA Career Center to view or post job openings at https://jobs.wsba.org. The special discounted rate for nonprofit and small-firm employers, to prevent pricing from becoming a barrier as the legal community continues to navigate the effects of the COVID-19 crisis, has been extended through June 30. Contact Michael Reynolds at 612-968-3431 or michael.reynolds@communitybrands.com for more information.

Virtual Job-Seekers Group

Virtual Job-Seekers Group begins March 1 at 9:30 a.m. This group provides skills and support in your job search with focus upon applying for jobs, interviewing, and résumé review. Email wellness@wsba.org if you are interested.

Free Consultations and Practice-Management Assistance

The WSBA offers free resources and education on practice management issues. For more information, visit www.wsba.org/oma. You can also schedule a free phone consultation with a WSBA practice-management professional.
QUICK REFERENCE
Feb. 2021 Usury

The usury rate for Feb. 2021 is 12.00%. The auction yield of the Jan. 4, 2021, auction of the six-month Treasury Bill was 0.091%. The interest rate required by RCW 4.56.110(3)(a) and 4.56.115 for Feb. 2021 is 2.091%. The interest rate required by RCW 4.56.110(3)(b) and 4.56.111 for Feb. 2021 is 5.25%.

WSBA COVID-19 Resource Web Page
All WSBA resources, including member support, law firm management, free CLEs and webinars, information about Washington courts, opportunities to help, and resources for the public can be found here: www.wsba.org/COVID-19.

Court Emergency Operations & Closures
The Washington Supreme Court has published a COVID-19 response page, which is a compilation of its emergency orders and court modifications: www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.COVID19.

Law Office Reopening Guide

WSBA to join the list. Please email diversity@wsba.org to join. Recent past newsletters are posted here: www.wsba.org/about-wsba/equity-and-inclusion/achieving-inclusion.

HAVE SOMETHING NEWSWORTHY TO SHARE?
Email wabarnews@wsba.org if you have an item you would like to place in Need to Know.

For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

WSBA Member Wellness
WSBA Connects
WSBA Connects provides all WSBA members with free counseling on topics including work stress, career challenges, addiction, and anxiety. Visit www.wsba.org/for-legal-professionals/member-support/wellness/wsba-connects or call 800-765-0770.

The ‘Unbar’ Alcoholics Anonymous Group
The Unbar is an “open” AA group for attorneys that has been meeting weekly for over 25 years. Due to COVID-19, the group is holding virtual meetings via Zoom; contact them at unbarseattle@gmail.com. You can also find more details at www.wsba.org/for-legal-professionals/member-support/wellness/addiction-resources.

WSBA Community Networking
ALPS Attorney Match
Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. Learn more at www.wsba.org/connect-serve/mentorship/find-your-mentor, or email mentorlink@wsba.org.

Diversity-Stakeholders List Serve
The WSBA Diversity-Stakeholders list serve is for sharing information about diversity, inclusion, and equity issues affecting the legal community. You do not need to be a member of the WSBA to join the list. Please email diversity@wsba.org to join. Recent past newsletters are posted here: www.wsba.org/about-wsba/equity-and-inclusion/achieving-inclusion.

New Lawyers List Serve
This list serve is a discussion platform for new lawyers of the WSBA. To join, email newmembers@wsba.org.

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Resigned in Lieu of Discipline

Paul Michael Donion (WSBA No. 25053, admitted 1995) of Tacoma, resigned in lieu of discipline, effective 11/16/2020. Donion agrees that he is aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct and rather than defend against the allegations, wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following alleged violations of the Rules of Professional Conduct: 1.15A (Safeguarding Property), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct).

Donion's alleged misconduct, as stated in disciplinary counsel's Statement of Alleged Misconduct, related to his representation of client A in a business transaction matter, to overdrafts of his trust account, and to his failure to comply with the conditions of probation related to a previous reprimand. Disciplinary counsel's Statement of Alleged Misconduct includes: 1) failing to cooperate in three grievance investigations; and 2) failing to provide an accounting in client A's matter.

Marsha Matsumoto acted as disciplinary counsel. Kevin M. Bank represented Donion. The online version of Washington State Bar News contains a link to the following document: Resignation Form of Paul Michael Donion (ELC 9.3(b)).

Suspended

Ann Berryhill Witte (WSBA No. 6323, admitted 1975) of Portland, OR, was suspended for 30 days, effective 9/19/2018, with the entire suspension stayed based on her successful completion of the two-year term of probation in Oregon, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. For more information, see https://www.osbar.org/members/membersearch_display.asp?b=770776&s=1. Joanne S. Abelson acted as disciplinary counsel. Ann Berryhill Witte represented herself. The online version of Washington State Bar News contains a link to the following document: The Washington Supreme Court Order.

Reprimanded

Leila Louisa Hale (WSBA No. 47247, admitted 2014) of Henderson, NV, was reprimanded, effective 10/16/2020, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Nevada. For more information, see https://www.nvbar.org/wp-content/uploads/2020.01.28-Public-Reprimand.pdf. Henry Cruz acted as disciplinary counsel. Leila Louisa Hale represented herself. The online version of Washington State Bar News contains a link to the following document: The Washington Supreme Court Order.

Nadia Kate Kourehdar (WSBA No. 45597, admitted 2012) of North Bend, was reprimanded, effective 12/03/2020, by order of the Chief Hearing Officer. Kourehdar's conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 1.6 (Confidentiality of Information), 1.8 (Conflict of Interest: Current Clients: Specific Rules).

Francesca D’Angelo acted as disciplinary counsel. Nadia Kate Kourehdar represented herself. The online version of Washington State Bar News contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Notice of Hearing on Petition for Reinstatement of Dean Dinh Nguyen

A petition for reinstatement after disbarment has been filed by Dean Dinh Nguyen (WSBA No. 30148), who was admitted in 2000 and disbarred in 2012. A hearing on Nguyen's petition will be conducted before the Character and Fitness Board on Friday, April 9, 2021. Anyone wishing to do so may file with the Character and Fitness Board a written statement for or against reinstatement, setting forth factual matters showing that the petition does or does not meet the requirements of Washington State Supreme Court Admission and Practice Rule (APR) 25.5(a). Except by the Character and Fitness Board's leave, no person other than the petitioner or petitioner's counsel shall be heard orally by the Board.

Communications to the Character and Fitness Board should be sent to Renata Garcia, Counsel to the Character and Fitness Board, Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or to renatag@wsba.org. This notice is published pursuant to APR 25.4(a).
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We Are Looking for a Few Good Writers

See your name in lights (well, in ink, anyway) in the Washington State Bar News! If you have an article of interest to Washington lawyers or have been meaning to write one, see page 7 for article submission guidelines. Bar News relies almost entirely on the generous contribution of articles from WSBA members.

Questions? Contact wabarnews@wsba.org.
Thank You!

With your gifts during license renewal, you renewed your commitment to justice.

✓ YOUR GIFT to the Washington State Bar Foundation supports the Washington State Bar Association’s Moderate Means Program, and the new Powerful Communities Project, which provides grants to support legal services statewide for our most vulnerable communities. We also proudly support WSBA’s important Diversity, Equity & Inclusion work.

✓ YOUR DONATION to the Campaign for Equal Justice funds 30+ legal aid programs like Northwest Immigrant Rights Project, King County Bar Pro Bono Program, Columbia Legal Services, and TeamChild to advance civil justice for youth and people of color, immigrants, and all who suffer the injustices of poverty and systemic racism.

We are grateful to everyone who gave this year. It’s not too late to join them—give online today!

WASHINGTON STATE BAR FOUNDATION
wsba.org/foundation

CAMPAIGN for
EQUAL JUSTICE
legalfoundation.org

The Washington State Bar Foundation and Legal Foundation of Washington (Campaign for Equal Justice) are public charities. Your donations are tax-deductible to the full extent of the law.
Announcements

Sakaguchi, Felbeck & Reese, PLLC

We are thrilled to announce the formation of the law firm of Sakaguchi, Felbeck & Reese, PLLC at our new location in Kirkland, serving the greater King County area, as well as Snohomish and Pierce Counties. Our firm specializes in all aspects of family law including mediation, collaborative divorce, litigation and limited legal services. We also offer landlord/tenant, real estate, business law, estate planning and probate areas of practice.

Hamrick, Palmer, Johansen, PLLC

Welcomes David Johansen as Partner!

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Sincerely thanks the following accomplished attorneys for their commitment to our firm and to their excellence in the practice of law:

Robert L. Beale
William P. Bergsten
Hon. Rosanne Buckner, Ret.
Henry Haas

Please join us in wishing them the best in their future endeavors.

Hon. Rosanne Buckner, Ret. and Henry Haas will continue practicing independently.

In Gratitude,
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New partner or associate at your firm? Let the legal community know in the Announcements section of the Washington State Bar News!

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BUSINESS IMMIGRATION

I-9 COMPLIANCE

ocial Security
No-Match Letters

Most companies in WA now have business connections abroad or foreign-born employees. We work with business and employment lawyers regarding immigration needs, and advise employers on I-9 compliance and social security no-match letters. Our lead immigration attorney earned a master’s degree in international business, which together with 27 years of immigration experience makes her particularly well-qualified to guide you and your clients.

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(See, e.g.,):
Yates v. Fithian,
2010 WL 3788272
(W.D. Wash. 2010)
City of Seattle v. Menotti,
409 F.3d 1113 (9th Cir. 2005)
State v. Letourneau,
100 Wn. App. 424 (2000)
Fordyce v. Seattle,
55 F.3d 436 (9th Cir. 1995)
LIMIT v. Maleng,
874 F. Supp. 1138 (W.D. Wash. 1994)

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Extremely profitable Seattle immigration law practice that has average gross revenue of over $1,650,000 the last three years (2018-2020). This successful firm has substantial advance fees in trust. The practice employs one attorney in addition to the partners, six paralegals, and three administrative staff. If you are interested in exploring this opportunity, would like the freedom to be your own boss, and/or increase your current book of business substantially, then this is perfect for you. Call or email us to set up a viewing or to learn more about this practice. Email “Profitable Seattle Immigration Law Practice” to info@privatepracticetransitions.com or call 253-509-9224.

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Profitable Northwest Oregon law practice located in Marion County. The practice was established in 1991 and has a practice/case breakdown by revenue of 34% probate and trust administration, 30% estate planning, 20% real estate transactions, and 10% business law and contracts. The practice is completely turnkey and has a strong client base. If you are interested in exploring this opportunity, would like the freedom to be your own boss and build upon a thriving practice, then this practice is perfect for you! Email info@privatepracticetransitions.com or call 253-509-9224.

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**BAR NUMBER:** 51577

**LAW SCHOOL:** University of Washington

I recently joined the litigation group of Stoel Rives LLP’s Seattle office after concluding a clerkship at the U.S. District Court for the Western District of Washington. I can be reached at harrison.owens@stoel.com.

I became a lawyer after realizing that graduate-level psychology research was not for me. Luckily, my parents’ background in law and several lawyers’ willingness to discuss their careers made the decision to switch my focus to law school an easy one.

Before law school, I majored in psychology at the University of Washington. In addition, I worked part-time at a biotech lab beginning in my junior year of undergrad through my first two years of practice.

My greatest accomplishment as a lawyer has been completing two clerkships—one at Division I of the Washington Court of Appeals and one at the U.S. District Court for the Western District of Washington. It was a privilege to work for two great judges, and I could not have asked for a more comprehensive introduction to the practice of litigation.

In my practice, I work on constantly improving my research and writing skills. Thorough research is necessary to find arguments to support your client’s position. And clear and precise writing is required to convey those arguments to the other party and the court.

The most rewarding part of my clerkships was being involved in the courts’ substantive decisions. My judges trusted their clerks to arrive at sound recommendations, and that trust increased my confidence in my own decision-making.

During my free time, I enjoy playing soccer, learning Japanese, walking my dog, and exploring new hikes around Seattle.

I look up to my parents. Both are lawyers, and they always made time for my sister and me when we were growing up. Now that I have joined them in the practice of law, I appreciate the time-management skills that enabled them to make that time available to us.

I absolutely cannot live without coffee. I began drinking coffee while working part-time at a lab during undergrad, in part because a large pot was always available. I now find it hard to remember how I functioned before then.

If I took one day off in the middle of the week, I would take my dog with me to explore a new hiking trail.

I enjoy reading fiction in my spare time. Recently, I have been reading Never Let Me Go by Kazuo Ishiguro and The Dark Tower series by Stephen King.

I was born in Dallas, Texas, and grew up on Mercer Island.

My fondest childhood memory is playing baseball, basketball, and soccer with my friends. The experience of learning a team-based sport with friends is hard to re-create later in life.

Friends would describe me as quiet some of the time and goofy the rest of the time.

I give back to my community by volunteering on the Board of Trustees of the Puget Sound Association of Phi Beta Kappa.

I look forward to dedicating as much time as possible to pro bono work now that I have entered private practice.

This makes me smile: my dog’s enthusiasm at seeing me even if we have only been apart for five minutes.

My dream trip would be traveling to Japan, South Korea, and China. Visiting my extended family in Japan is always a pleasure, and I hope to learn more about South Korea’s and China’s respective cultures.

My all-time favorite movie or TV show is Breaking Bad.

I would like to learn how to play guitar and how to speak German.

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